

**IN THE COURT OF SH. SUSHIL KUMAR,
ADDITIONAL SESSIONS JUDGE-04,
NORTH-DISTRICT, ROHINI COURTS, DELHI.**

**CNR No. DLNT01-005346-2025
CR No. 104/2025**

SAMEER KHANNA

S/o Sh. Pran Nath Khanna,
R/o: C-3/2, DLF Phase-I, Gurugram,
Haryana.

.....Revisionist

VS.

M/S. SIPPY CHIT FUND PVT. LTD

Through its Director, Mr. Narender Arora,
217, Express Tower, Commercial Complex,
Azad Pur, Delhi-110033.

.....Respondent

Date of institution of appeal : 30.04.2025
Date on which judgment pronounced : 31.07.2026

ORDER

1. Vide this order, this Court shall decide the present revision petition under Section 438/440 BNSS filed by the revisionist against the impugned order dated 04.02.2025 and 08.03.2016 (*hereinafter referred as impugned order*) passed by Ld. MM-06, North-District, Rohini Courts, Delhi (*hereinafter referred to as Ld. Trial Court*), in Complainant Case No.216/2016, in case titled as 'M/s. Sippy Chit Fund Pvt Ltd Vs Sameer Khanna' whereby Ld. Trial Court issued summons to revisionist and declined to recall the order on summoning respectively.

2. Feeling aggrieved, the revisionist challenged the aforesaid impugned order passed by Ld. Trial Court by filing the present criminal revision petition on the following grounds:

i) That the impugned orders dated 08.03.2016 and 04.02.2025 as well as the complaint filed by the Complainant is bad in law and therefore, the orders dated 08.03.2016 and 04.02.2025 being patently wrong, erroneous, arbitrary and highly prejudicial to the rights of the petitioners are liable to be set-aside and the complaint of the complainant is liable to be set-aside.

ii) That upon bare perusal of the complaint and the documents filed along with the same, including cheques in question and legal demand notice under section 138 of NI Act, clearly and without cavil reveals that the drawer of the cheques in question is the Company i.e., M/s. Metaphor Exports Pvt Ltd. As per the mandatory requirement of law, more specifically, as enshrined in Section 138 of the NI Act, the Legal Demand Notice has to address to the drawer of the cheque, however, in the present case, the Legal Demand Notice has admitted neither sent nor addressed to the company and further even in the complaint, the company has not been arraigned as an accused, thus, the complaint of the respondent / complainant is not maintainable and thus, the orders dated 08.03.2016 and 04.02.2025 are liable to be set-aside and the complaint is

liable to be dismissed.

iii) That, it has been repeatedly held by both the Hon'ble Supreme Court of India as well as Hon'ble High Court of Delhi in its judgments that where the offence has been committed by the Company i.e., where company is drawer of the cheque, it is imperative that company should be arraigned as the party to the proceedings under Section 138 of the NI Act and without arraigning the company as an accused, the complaint is non-maintainable.

iv) That in the present case, an erstwhile director of the company on whose account the cheque has been drwn has been arraigned as a party and not the company. However, as per the extant law, for maintaining a prosecution under Section 138/141 of the NI Act, against the directors and / or persons-in-charge i.e., persons who are defined under Section 141 of the NI Act, arraigning a company as an accused is imperative and in the absence of the same, the complaint is not maintainable and therefore, the orders dated 08.03.2016 and 04.02.2025 are liable to be set-aside and the complaint is liable to set-aside.

v) That as per the extant law other categories of offenders who are defined under Section 141 of the NI Act, where the drawer of the cheques in question is the

company, can only be brought in the dragnet on the touchstone of vicarious liability, only if the company has been made arraigned as a party / accused, however, the same has not happened in the present case and therefore, the orders dated 08.03.2016 and 04.02.2025 are liable to be set-aside and the complaint is liable to set-aside.

vi) For that as per the extant of law unless the company i.e., Principal Entity (Drawer of the cheques in question) is prosecuted as an accused, the subsidiary entity (i.e., the individuals / persons defined under section 141 of the NI Act) cannot be held liable. It is submitted that in the case in hand by no stretch of imagination, in the present scenario, the company can be prosecuted as neither the Company has been arraigned as an accused nor the Legal Notice has been sent to the Company, thus, mandatory requirements of Section 138 of the NI Act, have not been complied with. Therefore, the orders dated 08.03.2016 and 04.02.2025 are liable to be set-aside and the complaint is liable to set-aside.

vii) That as per the extant law, it is submitted that Directors / Authorized Signatories cannot be held under Section 138 of the NI Act without company being made party to the complaint case. In the present case, neither the company has been arraigned as an accused nor the Legal

Notice has been sent to the Company, thus, mandatory requirements of Section of 138 of the NI Act have complied with. Therefore, the orders dated 08.03.2016 and 04.02.2025 are liable to be set-aside and the complaint is liable to set-aside

viii) For that proceedings with the trial in the complaint would not only be prejudicial to the rights of the petitioner but would be a grave miscarriage of justice in as much as the petitioner will have to needlessly go through the rigmarole of the entire trial in a complaint which is ex-facie not maintainable. Therefore, without prejudice to the aforesaid grounds, in the interest of justice, the impugned orders dated 08.03.2016 and 04.02.2025 are liable to be set-aside and the complaint is liable to set-aside.

3. It is prayed on behalf of revisionist that the impugned orders dated 08.03.2016 and 04.02.2025, passed by the Ld. Trial Court may kindly be set-aside.

4. On the other hand, Ld. Counsel for respondent has vehemently opposed the present revision petition. It is argued that the present revision petition is not maintainable as revisionist has concealed material facts and has not come to the Court with clean hands. It is argued that the order on summoning was passed on 08.03.2016 i.e., around ten-eleven years back and that there is

a delay of ten-eleven years in challenging the summoning order dated 08.03.2016 which cannot be condoned. It is argued that there is no merit in the present revision petition, therefore, the same may kindly be dismissed.

5. This Court has given thoughtful consideration to the arguments advanced on behalf of Ld. Counsel for the revisionist as well as Ld. Counsel for the respondent and also perused the material available on record.

6. Trial Court Record (TCR) has been summoned and the same has been perused. Perusal of the Trial Court Record shows that the present complainant was received by way of assignment in the Court of Ld. MM-06, North-District, Rohini Courts, Delhi on 08.03.2016 and the on same date, after recording pre-summoning evidence, summons were issued to revisionist. It is not in dispute that the present revision petition has been filed after a huge delay of around nine-ten years. An application for condonation of delay has been moved on behalf of revisionist. It has been argued on behalf of revisionist that he has been continuously apprising Ld. Trial Court that the cheque in question was not issued by revisionist Sameer Khanna but by a company namely M/s. Sippy Chit Fund Pvt Ltd. It is further argued that arguments on the maintainability of complaint were also heard by Ld. Trial Court but vide impugned order dated 04.02.2025, Ld. Trial Court held that cognizance was already

taken, therefore, it had no power to review its own order and Ld. Trial Court proceeded with trial of the said complaint. It has pointed out by Ld. Counsel for revisionist that while considering the arguments made on behalf of revisionist, Ld. Trial Court had given its observation that the cheque in question has not been signed by revisionist / accused Sameer Khanna, however, legal notice under section 138 of NI Act was only sent to Sameer Khanna and not to the company on behalf of which the cheque has been issued.

7. In case titled as '**Himanshu vs B. Shivamurthy**', AIR 2019 SC 3052, Hon'ble Supreme Court of India has held that "*In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to [Section 138](#), the High Court was in error in holding that the company could now be arraigned as an accused*".

8. In case titled as '**Pawan Kumar Goel vs State Of U.P.**', Hon'ble Supreme Court of India has observed that "*The criminal liability for the offence by a company under [section 138](#), is fastened vicariously on the persons referred to in sub-section (1) of [section 141](#) by virtue of a legal fiction. Penal statutes are to be construed strictly. Penal statutes providing constructive vicarious liability should be construed much more strictly. When conditions are prescribed for*

extending such constructive criminal liability to others, courts will insist upon strict literal compliance. There is no question of inferential or implied compliance. Therefore, a specific averment complying with the requirements of [section 141](#) is imperative. As pointed out in [K. Srikanth Singh vs. North East Securities Ltd - 2007 \(12\) SCC 788](#), the mere fact that at some point of time, an officer of a company had played some role in the financial affairs of the company, will not be sufficient to attract the constructive liability under [section 141](#) of the Act’.

9. In case titled as “**N. Balakrishnan vs M. Krishnamurthy**”, Hon’ble Supreme Court of India has observed that “*It is axiomatic that condonation of delay is a matter of discretion of the court [Section 5](#) of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court’.*

10. It is not in dispute that there is a huge delay in filing of the present revision petition. However, in the light of aforementioned case law, it is clear that length of delay is of no matter and acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In the present case, it is not in dispute that the cheque in question has been issued by a company namely “M/s. Metaphor Exports Pvt Ltd” and not by the revisionist in his individual capacity. Further, it is not in dispute that upon dishonor of the cheque in question, Legal Demand Notice was issued to revisionist Sameer Khanna only and not to the company namely M/s. Metaphor Exports Pvt Ltd.

11. It is also not in dispute that the respondent has filed the present complaint under section 138 of NI Act only against revisionist Sameer Khanna not against M/s. Metaphor Exports Pvt Ltd who is the drawer of cheque in question. However, in the present case, despite the fact that mandatory requirements of section 138 NI Act were not complied with, Ld. Trial Court, contrary to the settled position of law, issued summons to revisionist. Thus, Ld. Trial Court committed an error while passing impugned order 08.03.2016 whereby revisionist was summoned as an accused in the present complaint case. The delay in the present case, might be long but in the given facts and circumstances, end of the justice would be served if the delay in

filing of the present revision petition is condoned, therefore, the delay in filing of the present revision petition is condoned. As already discussed above, in the present case, the present complaint has been filed only against revisionist Sameer Khanna and not against M/s.Metaphor Exports Pvt Ltd who is the drawer of the cheque in question. Thus, in the light of above-discussed case laws, it can be safely concluded that there is error in the impugned order dated 08.03.2016 passed by Ld. Trial Court whereby the revisionist / accused was summoned in the present complaint case.

12. In view of the above discussion, the impugned order dated 08.03.2016 passed by Ld. Trial Court is hereby set-aside. The present revision petition stands disposed off as allowed.

11. A copy of this order be supplied to both the parties and be also sent to Ld. Trial Court.

12. Revision file be consigned to the **Record Room** after due compliance.

**Pronounced in open court
on this 31st day of July, 2026.**

**(Sushil Kumar)
Addl. Sessions Judge-04
North District Rohini Courts Delhi
31.07.2026 ^(R)**