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

% *Judgment reserved on: 29.01.2026*
Judgment pronounced on: 29.04.2026
Judgment uploaded on: 07.05.2026

\+ **CRL.M.C. 5351/2024 & CRL.M.A. 2948/2026**

M/S S AND J BEVERAGES PRIVATE LIMITED & ORS. .....Petitioners

Through: Mr. Asheesh Raizada and Mr. Ritwik Pandey, Advocates

versus

STATE OF NCT OF DELHI THROUGH CHIEF SECRETARY & ANR. .....Respondents

Through: Mr. Digam Singh Dagar, APP for the State

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of the present petition, the petitioners seek setting aside of the order dated 19.02.2024 [hereafter '*impugned order*'], passed by the learned Principal District and Sessions Judge, Saket Courts, Delhi [hereafter '*Revisional Court*'] in Criminal Revision No. 456/2023, and order dated 21.12.2021, passed by the learned Chief Metropolitan Magistrate, South-East, Saket Courts, Delhi [hereafter '*Magistrate*'] *vide* which the petitioners herein had been summoned

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in Complaint Case NI Act/7466/2021 titled "Rakesh Mani Tripathi v. S and J Beverages Pvt. Ltd. and Others", for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 [hereafter '*NI Act*'].

2. Brief facts of the present case are that respondent no. 2, Rakesh Mani Tripathi, had filed a complaint under Section 138 of the NI Act against M/s S & J Beverages Pvt. Ltd. (petitioner no. 1), and its Directors Bhaskar Mani Tripathi and Sandeep Mani Tripathi (petitioner nos. 2 and 3 herein), who are also the brothers of respondent no. 2. It is the case of the respondent no. 2 that he had initially been appointed as a Director of the company in the year 2015, but had subsequently been removed in the year 2016. He had thereafter been reappointed as a Director in April, 2017. However, owing to persistent disputes and disagreements between respondent no. 2 and petitioner nos. 2 and 3, the parties had entered into a separation agreement dated 06.05.2018, whereby it was agreed that respondent no. 2 would relinquish his shareholding in the company upon receipt of a settled consideration amount. It is further the case of respondent no. 2 that, in terms of the aforesaid separation agreement, petitioner no. 3 had issued a cheque for a sum of ₹6,20,000/- on behalf of petitioner no. 1 company in favour of respondent no. 2. However, upon presentation, the said cheque had been dishonoured, giving rise to the cause of action for filing the complaint under Section 138 of the NI Act.

3. The learned Magistrate, *vide* order dated 21.12.2021, had

summoned the petitioners herein to face trial in the complaint case instituted by respondent no. 2. Aggrieved thereby, the petitioners had preferred a revision petition before the learned Revisional Court, which, *vide* the impugned order dated 19.02.2024, dismissed the said revision petition and upheld the summoning order passed by the learned Magistrate.

4. The learned counsel appearing for the petitioners argues that both the impugned orders have been passed without due application of mind and are, therefore, liable to be set aside. It is contended that respondent no. 2 was himself an active Director of petitioner no. 1 company and was, thus, equally responsible for the acts carried out on its behalf. It is further submitted that respondent no. 2 had procured a forged separation agreement dated 06.05.2018, pursuant to which the petitioners were allegedly required to make certain payments in consideration of the release of his shareholding. It is stated that, on the basis of the said agreement, respondent no. 2 had initiated multiple proceedings against the petitioners. The learned counsel further submits that one of the erstwhile Directors of the company, who is also the brother-in-law of the petitioners, had instituted one Original Suit No. 1446 of 2019 before the learned Civil Judge, Gautam Budh Nagar, Uttar Pradesh, wherein an interim injunction had been granted on 19.09.2019 restraining the utilisation of the separation agreement dated 06.05.2018 till the disposal of the said suit, which order was subsequently affirmed by the Allahabad High Court *vide* order dated 24.10.2019. It is contended that, despite

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the subsistence of the said injunction, respondent no. 2 proceeded to file the present complaint under Section 138 of the NI Act on the basis of dishonour of a cheque allegedly issued in his favour in terms of the said separation agreement. It is, therefore, argued that no legally enforceable debt or liability existed against the petitioners at the relevant time, which is a *sine qua non* for invoking Section 138 of the NI Act. Accordingly, it is prayed that the impugned orders be set aside.

5. *Per contra*, the learned counsel appearing for respondent no. 2 argues that the impugned summoning order passed by the learned Magistrate is well-reasoned and has been passed after due appreciation of the material on record, including both oral and documentary evidence led by respondent no. 2. It is submitted that, while exercising its inherent jurisdiction, this Court cannot conduct a mini-trial or adjudicate upon disputed questions of fact. The allegations of forgery or misuse of documents, as raised by the petitioners, are matters of defence which can only be established during trial by leading evidence. It is further contended that the learned Revisional Court has rightly rejected the petitioners' contention regarding the alleged stay on the utilisation of the separation agreement, observing that the present complaint is founded upon the dishonour of a cheque, which constitutes an independent statutory offence under Section 138 of the NI Act. It is argued that the Hon'ble Supreme Court has consistently held that the pendency of civil or contractual disputes does not bar prosecution

under Section 138 of the NI Act. It is, thus, prayed that the present petition be dismissed.

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

7. At the outset, it would be apposite to first set out what constitutes an offence under Section 138 of the NI Act. The Hon'ble Supreme Court, in ***Gimpex (P) Ltd. v. Manoj Goel:*** *(2022) 11 SCC 705,* has enumerated the same in the following terms:

> "26. The ingredients of the offence under Section 138 are:
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> 26.1. The drawing of a cheque by person on an account maintained by him with the banker for the payment of any amount of money to another from that account;
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> **26.2. The cheque being drawn for the discharge in whole or in part of any debt or other liability;**
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> 26.3. Presentation of the cheque to the bank;
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> 26.4. The return of the cheque by the drawee bank as unpaid either because 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;
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> 26.5. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and
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> 26.6. The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice."

8. Further, the Hon'ble Supreme Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel:*** *Criminal Appeal No. 1497 of 2022* has held that the offence under Section 138 of the

NI Act is attracted only where the cheque, upon dishonour, represents a legally enforceable debt or liability subsisting on the date of its presentation. The relevant observation reads as under:

> "30. In view of the discussion above, we summarise our findings below:
> (i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;..."

9. Firstly, one of the contentions of the petitioners is that the separation agreement dated 06.05.2018 is forged and fabricated, inasmuch as it does not bear essential particulars such as the stamp paper number and the details of the parties. In this regard, the learned Revisional Court has rightly held that the said contention, to the effect that the separation agreement is forged and fabricated, cannot be adjudicated at the stage of summoning. Such a defence raises disputed questions of fact, which can only be determined upon appreciation of evidence during trial. Accordingly, the said plea is a matter to be considered at the stage of trial after the parties have led their respective evidence.

10. However, the principal contention raised on behalf of the petitioners pertains to the legal enforceability of the liability itself. It is contended that the separation agreement dated 06.05.2018, on the basis of which the cheque in question had allegedly been issued, had already been stayed by the learned Civil Judge, Gautam Budh Nagar, Uttar Pradesh *vide* order dated 19.09.2019 in Original Suit No. 1446 of 2019, and the said order had subsequently been affirmed by the

Allahabad High Court *vide* order dated 24.10.2019. It is, thus, argued that once the operation and utilisation of the said agreement had been restrained by a competent civil court, the respondent no. 2 could not have relied upon the same or acted upon it, including by presenting the cheque issued pursuant thereto.

11. In this regard, this Court first notes that the signatures on the cheque in question are not disputed by the petitioners. The dishonour of the cheque, issuance of statutory legal notice as well as filing of the complaint within the prescribed period are also not in dispute. In such circumstances, the statutory presumption under Section 139 of the NI Act would stand attracted in favour of the complainant.

12. One may refer to the decision of Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar:*** *(2019) 4 SCC 197*, wherein it was observed as under:

> "33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that **a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability.** It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
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> 34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. **The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence**."

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13. The Hon'ble Supreme Court in the case of ***Rathish Babu Unnikrishnan v. State (NCT of Delhi):*** *2022 SCC OnLine SC 513,* has held that courts should be slow in quashing complaints under Section 138 of the NI Act at the pre-trial stage, particularly where factual issues are involved and the statutory presumption operates in favour of the complainant. The relevant observations are set out below:

> "16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. **What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.**
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> 17**. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence**. If this is allowed, the accused may be given an un-merited advantage in the criminal process. **Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.**
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> 18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. **Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."**
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> (emphasis added)

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14. Most recently, the Hon'ble Supreme Court in ***Renuka v. State of Maharashtra & Anr.:*** *2026 INSC 327*, was dealing with a case wherein a summoning order under Section 138 of the NI Act had been set aside at the pre-trial stage on the ground that there was no legally enforceable debt, inter alia, on the basis of disputed documents and pending disputes between the parties. The Hon'ble Supreme Court, while setting aside such orders and restoring the summoning order, held as under:

> "8. It is to be borne in mind that at the stage of issuance of process by the learned Metropolitan Magistrate, what is prima facie required to be seen is the issuance of cheque by the drawer in favour of the complainant, its dishonour on presentation by the payee, issuance of statutory notice under Section 138 of the N.I. Act and filing of the complaint within the prescribed statutory period. If the drawer does not dispute issuance of such a cheque nor does he deny his signature on the dishonoured cheque, the statutory presumption as contemplated under Section 139 of the N.I. Act comes into play. As a result, the burden would shift on the drawer of the cheque to prove that the cheque was not issued for any legally enforceable debt or liability. This exercise has to be undertaken during the trial either by relying upon the material brought on record by the complainant or by the drawer leading evidence in rebuttal. At the stage of issuance of process, the statutory presumption under Section 139 of the N.I. Act cannot be dislodged in a summary manner merely by contending that the cheque issued was not for any legally enforceable debt or liability.
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> 10. A perusal of the revisional order passed by the learned Judge of the Sessions Court indicates that he has given much importance to the fact that the agreement dated 12th January 2022 was not signed by the second respondent and, hence, the issuance of the cheque in question was not for any enforceable debt. He also appears to have given importance to the dispute between the appellant and her husband by stating that it was a

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matrimonial dispute and civil litigation between the said parties was pending in various Courts. In our view, the learned Judge misdirected himself when he proceeded to give more weightage to the document dated 12th January 2022 and in the process, ignored the fact that the basic ingredients for attracting the provisions of Section 138 of the N.I. Act had been duly satisfied by the appellant, at least for issuance of process. The drawing of the cheque by the second respondent, its presentation and subsequent dishonour at the instructions of the second respondent is not in dispute. The second respondent does not also dispute that he had issued the said cheque and that it was duly signed by him. The issuance of statutory notice as well as filing of the complaint within the prescribed period are also not in dispute. In such a situation, when the basic ingredients of Section 138 stand duly satisfied and the statutory presumption under Section 139 gets triggered, coming to a conclusion that the cheque was not issued for a legally enforceable debt at the pre-trial stage itself without granting an opportunity to the complainant to substantiate her case by leading evidence would amount to ignoring the statutory presumption that the cheque had been issued for a legally enforceable debt or liability. As a consequence, the presumption under Section 139 of the N.I. Act gets washed away even prior to commencement of the trial. We are of the view that in the facts of the present case, the dismissal of the complaint as a consequence of setting aside the order issuing process is totally unjustified in the absence of any material being brought on record by the second respondent to rebut the statutory presumption and prove his contention that the cheque was issued not towards any enforceable debt or liability…"

15. In the present case, though it has been argued that the separation agreement dated 06.05.2018 was stayed by the learned Civil Judge, Gautam Budh Nagar and such order was affirmed by the Allahabad High Court, this Court notes that the pleadings in the said civil suit, the precise nature of relief sought therein, and the scope and effect of the interim injunction are not before this Court in their entirety. Whether the said order rendered the agreement wholly

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inoperative, or merely restrained certain acts *inter se* parties, and whether the cheque in question could nonetheless be presented, are all questions which require proper adjudication upon evidence being led by both parties.

16. The issue as to whether there existed a legally enforceable debt or liability, in the backdrop of the alleged stay of the agreement, cannot be conclusively determined at this stage in proceedings under Section 482 of Cr.P.C. or while examining the validity of a summoning order. To reiterate, these are matters which lie squarely within the domain of the learned Trial Court and are to be adjudicated upon after the parties have been afforded an opportunity to lead evidence.

17. Needless to state, if the Trial Court, upon appreciation of evidence, arrives at a conclusion that no legally enforceable debt or liability existed, it would proceed to decide the case in accordance with law.

18. However, at this stage, this Court does not find it fit to quash the summoning order dated 21.12.2021 on the sole ground that there was no legally enforceable debt, particularly when the signatures on the cheque are not disputed and the foundational requirements for issuance of process under Section 138 of the NI Act stand *prima facie* satisfied, and more so, since the Hon'ble Supreme Court has repeatedly cautioned that proceedings under Section 138 of the NI Act ought not to be scuttled at the threshold on such grounds.

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19. Accordingly, the present petition is dismissed. Pending application also stands disposed of.

DR. SWARANA KANTA SHARMA, J

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