2026:DHC:3112

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

% ***Judgment Reserved on: 06.04.2026***
Judgment pronounced on: 16.04.2026

\+ **CRL.A. 850/2004**

DEVASHISH BHARDWAJ & MUKHOPADHYAYA.....Appellant

Through: None.

versus

STATE .....Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This jail appeal under Section 383 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by accused no. 2 (A2) in C.C. No. 174/2002, C.C. No. 175/2002, C.C. No. 229/2002, C.C. No. 230/2002, C.C. No. 310/2002 and C.C. No. 311/2002 on the file of the Court of the Additional Sessions Judge, Patiala House Courts, New Delhi challenging the conviction entered and sentence passed against him for the offence punishable

under Section 138 of the Negotiable Instruments Act, 1881 (the NI Act).

2. PW1, the complainant, filed a complaint alleging the commission of the offence punishable under Section 138 of the NI Act before the Metropolitan Magistrate, Delhi. On going through the trial records, I find order dated 05.04.2002 of the Magistrate, which reads thus:-

> "*Vide order dated 21.3.2002 bearing No. 336/Gaz/VI.E.2(a)/Misc the case stands transferred to the Court of Shri C.K. Chaturvedi Ld. A.S.J. Parties to appear the said court at 12. Noon today.*
>
> *M.M.*"

3. Letter no. 336/Gaz./VI.E.2(a)/Misc referred to reads:

"MOST IMMEDIATE AT ONCE
CONFIDENTIAL

No._ 336 /Gaz./VI.E.Z(a)/Misc.
From:
The Registrar (Vigilance)
High Court of Delhi New Delhi.

To

The District & Sessions Judge Delhi.

New Delhi, dated, the 15 March, 2002

Sub:

Regarding expeditious Section disposal of cases under 138 Negotiable Instruments Act

Sir, I am directed to refer to your letter No.141/Stt./Crl. dated 8.1.2002 on the above subject, and to say that Hon'ble the Chief Justice and Hon'ble Judges of this Court have been pleased to decide that all the cases triable under Section 138 of the Negotiable Instruments Act, pending as on 31.12.2001 in the Courts of various Metropolitan Magistrates in Tis Hazari Court, Patiala House Court and Karkardooma Court, be withdrawn Court and transferred to the Courts of Additional District and Sessions Judges as follows: -

...

xxx

...

Their Lordships have further been pleased to order that you may distribute such cases amongst the Additional District and Sessions Judges in equal number as practicable. However, Mr.C.K.Chaturvedi will be given lesser number of cases.

I am, therefore, to request you to kindly take necessary action in the matter under intimation to this Court."

(Emphasis Supplied)

4. In compliance with the aforesaid order, the cases were transferred to the court of the Additional Sessions Judge, who conducted the trial of the case and passed the impugned judgment. The parties in this appeal will be referred to as described in the complaint.

5. In the complaint it is alleged thus:-complainant no. 2 is the proprietor of complainant no. 1, engaged in the business of manufacturing, supplying, importing, and exporting textiles and ready-made garments. A2 is the proprietor of M/s Rikka Incorporated, namely, accused no. 1 (A1). A2 approached the second complainant for supply of goods, which were duly supplied. Thereafter, A2 issued six cheques bearing no. 260633, 260634, 260641, 260642, 260644 and 260645 for a total sum of ₹6,49,296/-, drawn on Vijaya Bank, Greater Kailash-II, New Delhi, towards the cost of the goods supplied. The cheques were signed by A2 in his capacity as proprietor, while assuring that the

cheque would be encashed upon presentation, as there was sufficient balance in his account. The complainant presented the cheques before Canara Bank, East of Kailash, New Delhi, for encashment. However, the cheques were dishonoured and returned *vide* return memo with the remark “Insufficient Funds.” Upon receiving this information, the complainant issued a registered notice dated 25.06.1997 demanding payment of the cheque amount. The notice was duly served upon the accused on 30.06.1997. Despite service of the notice, the accused failed to make payment of the cheque amounts within the statutory period of 15 days. The accused have so far not repaid the cheque amount, and hence the complaint.

6. On appearance of A2 before the trial court, the substance of the accusation as contemplated under Section 251 Cr.P.C. was read over and explained to A2, to which he pleaded not guilty.

7. On behalf of the complainant, PWs. 1 to 3 were examined and Exts. PW2/A-B, PW2/C1 to C6, PW2/D1 to D6, and PW3/A were marked in support of the case.

8. After the close of the prosecution evidence, A2 was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. A2 submitted that he has been falsely implicated in the case in place of one Surinder Kumar Aggarwal, with whom the second complainant had actual dealings and whose office address was B-93, Okhla Phase-II, New Delhi. He submitted that when the second complainant was unable to trace the said Surinder Kumar Aggarwal, he was wrongly substituted and falsely arrayed as an accused.

9. A2 did not adduce any oral or documentary evidence.

10. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned

judgment and order on sentence, found A2 guilty of the offence punishable under Section 138 of the NI Act and hence, sentenced him to undergo rigorous imprisonment for a period of one year in each of the case along with a total fine of ₹13,80,000/- and in default of payment of fine, to undergo simple imprisonment for one year. The sentences have been directed to run concurrently.

11. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellant/A2 by the trial court are sustainable or not.

12. At this stage, it is important to note that there was no representation for either side when the matter was taken up for hearing. As per order dated 18.12.2025, Advocate Deeparghya Datta was appointed as *Amicus Curiae* to represent the appellant. However, there was no representation on behalf of the appellant when the matter was taken up for hearing on 05.02.2026, 11.03.2026, 24.03.2026 and on 06.04.2026. The case is of the year

2004. Sufficient opportunity had already been granted. Hence, this Court was not inclined to adjourn the case. As held by the Hon'ble Supreme Court in **Bani Singh &Ors. v. State of U.P., (1996) 4 SCC 720**, this Court is not precluded from deciding the appeal on merits despite such non-appearance, as an appeal cannot be kept pending indefinitely. Accordingly, this Court proceeds to consider the appeal on merits after going through the entire records in the case.

13. Complainant no. 2, when examined as PW1, reiterated the case in his complaint. He deposed that A2 had disclosed his name as Surinder Kumar Aggarwal, which fact is also stated in the registered letter dated05.06.1997 received by him from the latter. He had lodged a complaint at the Garhi police post, and when A2 was summoned, the latter moved an application for anticipatory bail through his counsel. The said court directed A2 to furnish his name and address, pursuant to which his counsel provided the

same to the investigating officer in the said case *vide* letter dated 06.08.1997. From the said letter, it was revealed that A2hadtwo other names also, namely, D. Mukhopadhyaya and Debashish Mukherjee, a fact previously unknown to him.

13.1. PW1, in his cross-examination, deposed that at the time of filing the complaint, he knew A2 by the name of Surinder Kumar Aggarwal. He came to know about the actual name of A2 only when the court directed him to disclose his name in pursuance of his anticipatory bail application. A2 had come to him personally for the first time in the year 1996–1997. He has maintained proper records regarding the transactions, which could be verified from the records. He does not know any person by the name of Surinder Kumar Aggarwal except the accused, who used to represent himself by that name. He denied the suggestion that the accused present in the court had no dealings with him or that his dealings were with one Surender Aggarwal. He further denied the suggestion that he had not delivered any goods/articles to the accused or that the accused had not issued the cheque in question towards the said goods/articles. He also denied the suggestion that he had deposed falsely or that he was seeing the accused for the first time in court.

14. PW2, Senior Assistant, Vijaya Bank, Greater Kailash Part-II, New Delhi, produced the record relating to Current Account no. 227 of M/s Rikka Inc. (A1) and the certified copy of the cheque book issue register. As per the said record, cheque book containing cheque leaf nos. 260626 to 260650 were issued to M/s Rikka Inc. (A1) and were received by the proprietor of the said Firm. PW2 deposed that as per records, cheque nos. 260633, 260634, 260642 and 260644 were returned on 12.06.1997, and cheque nos. 260641 and 260645 were returned on 19.06.1997, all for the reason "insufficient funds." On 12.06.1997, as per statement of account No. CA-227 of M/s Rikka Inc. (A1), the

opening balance was ₹6,894.25/-, and on 19.06.1997, the balance was ₹969.25/-. When the cheques were presented for encashment through Canara Bank, they were returned due to insufficient funds in the account of M/s Rikka Inc (A1).

14.1 PW2, in his cross-examination, deposed that he could not say who was the proprietor of M/s Rikka Inc.(A1), though account no. CA-227 was opened on 07.04.1997. He reiterated that as per records, cheque Nos. 260633, 260644, 260634 and 260642 had been returned on 12.06.1997, and cheque Nos. 260645 and 260641 returned on 19.06.1997. He denied the suggestion that on 19.06.1997, no memo was issued by the bank or that he was deposing falsely.

15. PW3, Officer, Canara Bank, East of Kailash, New Delhi, produced the record in respect of Account No. 5370 of complainant no. 1. As per the record, cheque Nos. 260645 and 260641 were deposited on 17.06.1997 and were returned on

18.06.1997. He confirmed that all six cheques were returned unpaid and the same were sent back to the complainant.

15.1 PW3 was not cross-examined.

16. The offence under Section 138 of the NI Act is committed when a person issues a cheque to pay a legally enforceable debt or liability and the cheque is returned unpaid by the bank due to insufficient funds or because it exceeds the arranged amount. The further ingredients are that the cheque should be presented within a period of six months from the date on which it is drawn or within the validity period; the payee must send a written legal notice within thirty days of receiving information about its dishonour; and the drawer fails to make payment within fifteen days of receiving the notice.

17. The complaint sets out all the foundational ingredients required under Section 138 of the Act. It establishes that the second complainant, engaged in the business of textiles and

garments, had supplied goods to A2, who, in discharge of his liability, issued six cheques, all drawn on Vijaya Bank. The cheques, upon presentation within its validity period, was dishonoured with the remarks "insufficient funds." Thereafter, a statutory notice dated 25.06.1997 was issued and duly served upon A2 on 30.06.1997, but despite expiry of the statutory period of fifteen days, no payment was made.

18. The issuance of the cheques in question and its dishonour stands proved by the evidence on record. Ext. PW2/E account statements further demonstrate that the balance in the account was negligible at the relevant time, thereby confirming the reason for dishonour. A2 has not disputed the existence of the account or the issuance of the cheques in any substantive manner, nor has he led any evidence to show that the cheques did not belong to him or his Firm. The testimony of PW2 and PW3 independently corroborates the presentation and dishonour of the

cheques. The entries in Ext. CW2/1 and Ext. PW3/A statement of account clearly reflect the deposit and return of the cheques amounts, thereby completing the chain of events.

19. The only defence taken by A2 is that he has been falsely implicated in the present case and that complainant no. 2 had actual dealings with another person, namely, Surinder Kumar Aggarwal, and not with him. It is contended that when complainant no. 2 was unable to trace the said person, the appellant has been wrongly substituted in his place and made an accused in the case. A2 thus denies having any business transactions with the complainant, disputes his liability, and claims that he did not issue the cheques in question towards any legally enforceable debt or liability. PW1, in his testimony, categorically stated that he had dealings with the accused, who used to represent himself as Surinder Kumar Aggarwal and that he came to know of his real identity only during the court proceedings when, pursuant

to the anticipatory bail application, A2 was directed to disclose his correct name and particulars. There is no explanation as to why PW1 would name A2 in his complaint instead of the actual offender. A2 in his Section 313(1)(b) Cr.P.C statement submitted that the signature and writings on Ext. CW3/1 letter are not his. He could not recall if Ext. CW3/6, the anticipatory application was the same as the one he moved due to lapse of time and denied the signatures in Ext.CW3/6. Merely stating that he does not recall the application due to lapse of time does not disprove the document, especially when he admits that he had filed an anticipatory bail application. His mere denial of the signatures in Ext. CW3/6 is also of no consequence in the absence of any supporting evidence. On the contrary, a perusal of Ext. CW3/6 shows that the application pertains to A2.

20. The case of PW1 relating to the payment of the amount and execution of the cheque by A2 stands proved. The burden then

shifts on A2 to rebut the presumption contained under Section 139 of the NI Act. However, A2 never adduced any evidence whatsoever, either oral or documentary, to substantiate his plea of false implication or mistaken identity. A bare denial in the statement under Section 313 Cr.P.C. is insufficient in law to rebut the presumption.

21. As the evidence on record clearly proves the case of PW1, I find that the trial court was right in concluding that an offence under section 138 of the NI Act has been committed by the accused. Therefore, there is no infirmity calling for an interference from this Court.

22. The appeal *sans* merit is dismissed.

23. Applications(s), if any, pending stand closed.

CHANDRASEKHARAN SUDHA
(JUDGE)

APRIL 16, 2026