
(2026) 01 DEL CK 1358

In the Delhi High Court

Case No : Criminal Miscellaneous Petition No.7221 Of 2025, Criminal Miscellaneous Application Nos. 30302, 30303 Of 2025

Shri Sarvesh Puri

APPELLANT

Vs

Shri Rishab Kumar

RESPONDENT

Date of Decision : 05-01-2026

Acts Referred:

Bhartiya Nagarik Suraksha Sanhita, 2023 — Section 528
Code of Criminal Procedure, 1973 — Section 482
Negotiable Instruments Act, 1881 — Section 118, 138, 138(b), 139, 142, 142(2), 142(b), 142(2)(a)

Citation : (2026) 01 DEL CK 1358

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Kumar Balram, Arushi Mittal, Kalpana Srivastava, Ashwini Kumar, Bhoomit Dabas, Warsha Singh

Final Decision : Allowed

Judgement

Neena Bansal Krishna, J

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') seeking the quashing of the Complaint Case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act'), Summoning Order dated 06.12.2022 of the Ld. Metropolitan Magistrate, New Delhi, and all incidental proceedings emanating therefrom.

2. The facts in brief, are the Respondent/Mr. Rishab Kumar (Complainant), Petitioner/Mr. Sarvesh Puri (Accused No. 1), and one Mr. Prakhar Sahani was well acquainted and maintained cordial relations for an extended period. The Complainant and Mr. Prakhar Sahani granted a personal loan of Rs. 5,00,000/- to Mr. Sarvesh Puri, Accused No. 1 at the rate of 4% per month, on 23.08.2017, to be repaid by August 2018.

3. Due to an alleged lack of security, the Complainant and Mr. Prakhar Sahani deducted one year's advance interest amount and an amount of Rs 2,60,000/- was disbursed to the Accused.

4. According to the Complainant, the Accused made payments in a fragmented and disorganized manner, towards the interest between August, 2017 till February, 2019. Because of this continued default, the outstanding amounts including both the principal amount and accrued interest, was in excess of Rs. 10,00,000/-.

5. To discharge a part of the legally enforceable debt, the Accused No. 1/Mr. Sarvesh Puri, issued a cheque bearing No. 059447 drawn on Union Bank for a sum of Rs. 5,00,000/- in favour of the Complainant/Mr. Rishab Kumar. The cheque was presented for encashment on 30.04.2021, but it was returned unpaid on 03.05.2021 with the endorsement "Kindly Contact Drawer Drawee Bank".

6. A Legal Demand Notice on 30.12.2021 was issued at both the addresses of the Accused, despite no payment was made within the statutory period of 15 days. Consequently, the Complainant filed the Complaint Case No. 6034 of 2022 under Section 138 of the NI Act, on 24.06.2022.

7. The Ld. Magistrate took cognizance and issued summons to the Petitioner vide the impugned Order dated 06.12.2022.

8. The Petitioner has challenged the Impugned Order of summoning primarily on the grounds that the Complaint is not maintainable as the Legal Notice dated 30.12.2021 was issued nearly 7 months after the dishonor of the cheque on 03.05.2021, contrary to the 30-day mandate under Section 138(b) NI Act. Also, the impugned cheque was given as a security which has been misused by the Respondent, who is a stranger to the transaction.

9. The second ground of challenge is that the Complaint is barred by limitation. The cause of action arose on 15.01.2022 and the Complaint should have been filed within one month, in terms of Section 142(b) NI Act. Even after excluding the Covid -19 period in terms of Suo Motu Writ Petition (C) No. 3 of 2020 (In Re: Cognizance for Extension of Limitation), the limitation expired on 29.05.2022 i.e. 90 days from 01.03.2022. The Complaint was filed on 24.06.2022, which is beyond the limitation period and no Application for condonation of delay, was filed.

10. The third ground of challenge is that the Complaint was filed in Patiala House Courts which lack territorial jurisdiction. The cheque was presented at HDFC Bank, Hauz Khas Branch, which falls under the South District, Saket Courts, whereas the drawer's bank is in Vasant Vihar, South-West District. Relying on *Bridgestone India Pvt. Ltd. v. Inderpal Singh*, the Petitioner asserts the Complaint was filed in the wrong forum.

11. Per Contra, the Respondent has opposed the Petition, and has asserted that

the Complaint was filed within the limitation period as extended by the Apex Court due to the COVID-19 pandemic.

12. On the challenge of jurisdiction, the Respondent has submitted that the "Home Branch" of his Bank is situated at R.K. Puram, which falls within the New Delhi District, thereby conferring jurisdiction upon the Patiala House Courts under Section 142(2)(a) of the NI Act.

13. The issuance of the cheque and the signature thereon are admitted, raising the presumption under Sections 118 and 139 of the NI Act in favor of the holder.

14. The issues regarding the existence of debt and the nature of the cheque being given as a security are triable issues that cannot be adjudicated in a quashing Petition.

Submissions Heard and Record Perused.

15. The High Court's power under Section 528 BNSS (Section 482 CrPC) to quash proceedings is to be exercised sparingly, primarily to prevent the abuse of the process of any Court or to secure the ends of justice. However, where the continuance of the proceedings is an abuse of the process of Court, the Court is duty-bound to interfere.

A. Whether the Complaint has been filed in accordance with S.138 NI Act:

i) Whether "Legal Notice" was given within Time:

16. The first challenge to the maintainability of the Complaint is that the Legal Notice was not served within 30 days of receipt of information about the dishonor of the cheque. Section 138(b) of the NI Act mandates that the payee must make 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".

17. The Return Memo is dated 03.05.2021 while the Legal Notice was issued on 30.12.2021, i.e. nearly 7 months after the dishonor of the cheque. There is no averment in the Complaint regarding any subsequent presentation of the cheque that might have renewed the cause of action.

18. The Complaint merely states the cheque was presented on 30.04.2021 and returned on 03.05.2021. It is rightly stated by the petitioner that a Legal Notice issued on 30.12.2021 for dishonor of Cheque in May, 2021 makes it invalid.

19. Without a valid statutory Notice within the prescribed 30-day of dishonor of the Cheque, the cause of action under Section 138 NI Act, did not crystallize. The Complaint is therefore, liable to be rejected as it does not meet the requirements of S.138 NI Act.

20. However, considering that there was Covid -19 prevailing during the entire 2021, the delay in giving the Legal Notice is condonable, it may further be examined whether the Complaint is maintainable on other grounds.

ii) Whether the Cheque was given as Security:

21. A second aspect in regard to maintainability of the Complaint is the nature of the cheque in question, is whether it was issued towards the discharge of a legally enforceable debt or merely was a security cheque, as contended by the Petitioner.

22. The Petitioner asserts that the original loan amount of Rs. 2,60,000/- (disbursed amount) had already been repaid in full between 2017 and 2019 and there was no legally enforceable debt owed to the Respondent. However, in 2021, Mr. Prakhar Sahani claimed a minor outstanding balance of Rs. 50,000/- and represented that the initial Security Cheque No. 096237 was lost. On account of some misunderstanding about the outstanding dues, the Petitioner issued the blank cheque No. 059447 dated ----as fresh security, with the understanding that it would be returned once the misunderstanding was cleared. The Petitioner has argued that it was merely the security cheque and the underlying loan was allegedly repaid, thereby there was no legally recoverable debt.

23. Conversely, the Complainant/Respondent asserts that due to the Petitioner's failure to repay the principal amount by the agreed date of August 2018, interest continued to accrue. By January 2021, the outstanding dues allegedly exceeded Rs. 10,00,000/-. The impugned Cheque No. 059447 for Rs. 5,00,000/- was issued as an assurance towards part payment of this accumulated debt i.e. principal plus interest. The Complainant further relies on the statutory presumption that the mere issuance of the cheque acts as conclusive proof of the acknowledgement of liability.

24. First and foremost, there is no cogent basis disclosed by the petitioner, to assert that it was a security cheque given to secure the Loan amount. Pertinently, the precise case is that since there was no security available, out of the total loan of Rs. Rs. 5,00,000/- along with interest, only an amount of Rs. 2,60,000/-, was disbursed. As per the Petitioner, the loan amount was paid between August, 2017 till February, 2019 and there was a misunderstanding about the small balance amount of Rs. 50,000/- and also that initial Security Cheque was misplaced. If only a small amount remained to be paid at the time of issuance of Cheque on ----, there was no question of giving the Cheque for the entire loan amount. There is no basis to claim it was a security Cheque and not given towards existing Legal Liability.

25. Moreover, even if it is accepted that the cheque was given as security for a loan, it crystallizes into a legally enforceable debt on a subsequent date; the cheque, even if originally a "security" one, assumes the character of a cheque issued in discharge of that debt for the purpose of Section 138.

26. The concept of Security Cheques was explained by the Apex Court in the case of *Sripati Singh vs. State of Jharkhand*, (2022) 18 SCC 614, wherein it was observed:

"21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. "Security" in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow."

27. The Security Cheques are only given to be utilised if subsequently, during the business transactions, certain liabilities arise which are not fulfilled by the Petitioners.

28. The petitioner has asserted that the entire Loan except a small amount of Rs.50,000/- remains to be paid. This contention that there is outstanding loan amount or that it stood paid, is a disputed facts to be proved by evidence, which cannot be a ground to challenge the maintainability of the Complaint itself. This contention of Petitioner is, therefore, not tenable.

B. Whether Complaint was Filed within Limitation:

29. The primary ground of challenge is that the Complaint was filed beyond the statutory period of limitation. The Legal Notice dated 30.12.2021 was served, as per Complainant, on 31.12.2021. From there the expiry of 15-day Notice Period was until 15.01.2022. Thus, the Cause of Action arose on 16.01.2022. The normal limitation to file Complaint within one Month was up to 15.02.2022, which was during the Covid-19 Pandemic period.

30. The Apex Court, vide its order dated 10.01.2022 in In Re: Cognizance for Extension of Limitation (Supra), directed that in cases where the limitation expired during the period between 15.03.2020 and 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

31. Thus, the extended limitation began on 01.03.2022, and 90 days thereafter, was 29.05.2022, till when the Complaint could have been filed.

32. The Case Details from the e-Courts services placed on record by the Petitioner reflects that the Complaint was filed on 24.06.2022. The Index of the Complaint in the TCR is dated "___.05.2022" which indicates that it also did not give the date which was left blank. The physical filing date recorded by the registry, is 24.06.2022, which is 26 days beyond the extended limitation period

which expired on 29.05.2022.

33. Proviso to Section 142(b) NI Act allows the court to take cognizance of a Complaint after the prescribed period, if the complainant satisfies the court that he had "sufficient cause" for not filing the Complaint within the prescribed period. A perusal of the TCR reveals that the Complainant did not file any Application for condonation of delay along with the Complaint. The Complaint erroneously claims that the limitation was extended up to "28.03.2022" and claims the Complaint is within time.

34. The Ld. Magistrate, in the impugned summoning Order, took cognizance without recording any satisfaction regarding the delay or condoning it.

35. It is settled law that cognizance of a time-barred Complaint, without an Application for condonation of delay and an order condoning the delay, is bad in law.

36. The Complaint under S.138 NI Act is liable for rejection as being barred by limitation.

C. Whether Complaint was filed in the Court having Territorial Jurisdiction:

37. The Petitioner has sought to challenge the jurisdiction of Patiala House Courts, on the ground that the cheque was presented at HDFC Bank, Hauz Khas. Under Section 142(2)(a) NI Act, jurisdiction lies with the court within whose local jurisdiction the Branch of the bank where the payee maintains the account. The amended S.142 (2)NI Act reads as under:

"142. ...

(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"

38. Essentially meaning, when the cheque is delivered for collection through an account, the Complaint is to be filed before the Court where the payee or the holder in due course maintains his bank.

39. The Complaint states the "Home Branch" of the Complainant's Bank is situated at R.K. Puram, which falls within the New Delhi District. Therefore, this contention does not hold any merit.

Order:

40. In the light of the aforesaid discussion, it is established that the Complaint has not been filed within the timeline prescribed under S.138 NI Act and is barred by limitation.

41. Accordingly, the Petition is allowed and the Complaint along with all the proceedings emanating there from, including the Summoning Order dated 06.12.2022, is hereby quashed.

42. Pending Applications, if any, also stand disposed of.