IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CNR No: PHHC011146082022

2026:PHHC:204800

1. CRM-M-46862-2022 (O&M)

Parvesh Lakra **...Petitioner**

Versus

Devi Singh **...Respondent**

2. CRM-M-3511-2023 (O&M)

Kamal Kishore **...Petitioner**

Versus

Devi Singh **...Respondent**

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	19.11.2026
2	The date when the judgment is pronounced	25.11.2026
3	The date when the judgment is uploaded on the website	25.11.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kunal Dawar, Senior Advocate with
Mr. Shashikant Singh, Advocate
for the petitioner in ***CRM-M-46862-2022***.

Mr. Tanmoy Gupta, Advocate and
Mr. Yash Goyal, Advocate
for the petitioner in ***CRM-M-3511-2023***.

Mr. Shailender Singh, Advocate and
Mr. Vikas Chaudhary, Advocate
for the respondent.

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MANISHA BATRA, J.

1. This order shall dispose of abovementioned two petitions as they arise out of the same complaint and involve common questions of fact and law.

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2. Prayer in both the petitions, filed under Section 482 of the Code of Criminal Procedure, 1973 *(for short 'Cr.P.C.')*, is for quashing of complaint No.NACT-541 of 2016 dated 06.10.2016 titled as ***"Devi Singh v. Parvesh Lakra and another"*** under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 *(for short 'the NI Act')* (Annexure P-4), pending before the Court of learned Judicial Magistrate First Class, Palwal, along with summoning order dated 01.06.2017 (Annexure P-5) and all subsequent proceedings arising therefrom.

3. Brief facts of the case are that respondent Devi Singh, proprietor of M/s D.D. Travels, Palwal, had earlier filed three complaints under Section 138 of the NI Act against Kamal Kishore, who is the petitioner in CRM-M-3511-2023 and the father of Parvesh Lakra, the petitioner in CRM-M-46862-2022. These complaints were filed before the Court of learned Judicial Magistrate First Class, Faridabad, on the basis of cheque No.523838 dated 03.05.2014 for Rs.1,00,000/-, cheque No.523839 dated 09.05.2014 for Rs.1,00,000/- and cheque No.487507 dated 20.12.2012 for Rs.16,00,000/- (Annexures P-1 to P-3). The common case of the complainant in all of them was that he had advanced friendly loans to Kamal Kishore, who had issued the cheques towards repayment thereof. Kamal Kishore was summoned in those complaints and was facing trial therein.

4. During the pendency of those complaints, a settlement is stated to have been arrived at between the parties. In terms thereof, Parvesh Lakra issued two cheques in favour of the complainant, bearing No.602766 dated 01.06.2016 and No.602767 dated 01.08.2016, for Rs.5,00,000/- each, drawn on IndusInd Bank, Palwal. The complainant, however, did not withdraw the

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earlier complaints. On presentation, both the cheques were dishonoured with the remarks ***"Funds Insufficient"***. The complainant then served a legal notice dated 29.08.2016 upon the father and the son. On non-payment, he filed the impugned complaint, arraying Parvesh Lakra as accused No.1 and Kamal Kishore as accused No.2. The case of the complainant, as set out in paragraph 1 of the complaint, reads as under:-

> "1. That the accused and the father of the accused no. 1 i.e. accused no. 2 is one of the close friend of the complainant and due to a close relation accused no. 2 approached complainant for lend/borrowed an amount of Rs.18,00,000/- and complainant gave to the accused no. 2 the amount of Rs. 18,00,000/- (Eighteen lakhs only) in the month of July 2013 for personal use. After taking the said amount accused no. 2 promised to repay the said amount to complainant within a period of six months, the accused no. 2 failed to make the repayment of the said loan amount for that complainant filed cases U/S 138 of Negotiable Instrument Act and in those cases the accused no. 2 become proclaimed offender (Copy of the Order is enclosed herewith as annexure A,B,C) and **on behalf of the settlement accused no. 1 i.e. son of accused no.2 become ready to issue cheques to Complainant as put feet in the shoes of his father.** Complainant demanded the said amount then after great persuasion accused no.1 issued a cheque bearing no. 602766 dated 01.06.2016 for Rs. 5,00,000/- and 602767 dated 01.08.2016 for Rs. 5,00,000/- drawn on Indusland Bank Palwal in favour of complainant and accused no.1 and 2 assured complainant that the said cheque will be honoured on its presentation after that accused no. 2 re-joined the job as an Inspector in Palwal District without bail from the Court."

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5. On the basis of the preliminary evidence, learned Judicial Magistrate First Class, Palwal, vide order dated 01.06.2017 (Annexure P-5), summoned the accused to face trial for the offence punishable under Section 138 of the NI Act. Aggrieved by the same, the son and the father have filed the present petitions.

6. Copies of the judgments dated 28.10.2024 and the orders on quantum of sentence dated 05.11.2024, passed by learned Judicial Magistrate First Class, Faridabad in the three earlier complaints, have also been placed on record. In complaint No.NACT-4531-2014, relating to cheque No.487507 for Rs.16,00,000/-, Kamal Kishore was convicted under Section 138 of the NI Act. He was sentenced to undergo simple imprisonment for one year and to pay compensation of Rs.32,00,000/- to the complainant. In complaint No.NACT-3183-2014, relating to cheque No.523838 for Rs.1,00,000/-, he was convicted and sentenced to undergo simple imprisonment for two months and to pay compensation of Rs.2,00,000/-. In complaint No.NACT-3143-2014, relating to cheque No.523839, he was acquitted as the legal notice had not been issued within the statutory period of thirty days. During the trial of complaint No.NACT-4531-2014, the complainant had relied upon a document of compromise (Ex.C7), whereas Kamal Kishore denied his own signatures as well as those of his son thereon.

7. Learned counsel for the petitioners have argued that the impugned complaint is based on cheques which, according to the complainant himself, were issued in settlement of the three complaints already pending against Kamal Kishore. The complainant accepted the cheques but neither withdrew the earlier complaints nor gave up his claim in them. The compromise, thus,

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never fructified and the cheques in question did not create any new liability. They were not issued in discharge of any legally enforceable debt, which is the very foundation of an offence under Section 138 of the NI Act. Learned counsel have further argued that the loan of Rs.18,00,000/- pleaded in the impugned complaint is the same debt which formed the subject matter of the earlier complaints, as the cheques involved therein also add up to Rs.18,00,000/-. Those complaints have now ended in the conviction of Kamal Kishore in two cases, with a direction to pay compensation of Rs.34,00,000/- in all. The complainant cannot be permitted to prosecute the father and the son once again for the same debt, as it would amount to a second prosecution for one liability and an abuse of the process of the Court. On behalf of Kamal Kishore, it is additionally argued that he is neither the drawer nor a signatory of the cheques in question, which were issued by his son. Only the drawer of a cheque can be prosecuted under Section 138 of the NI Act. Section 141 of the NI Act applies only where the offence is committed by a company. No company is involved in the present case. To buttress their arguments, learned counsel for the petitioners have relied upon the authorities cited as ***Lalit Kumar Sharma and another vs. State of U.P. and another, (2008) 5 SCC 638***, ***Anita Mishra vs. Arun Kumar and others, 2016(2) RCR (Criminal) 846*** and ***Prabhakiran Jain vs. M/s S.R. Jewels Pvt. Ltd., 2025 NCDHC 4159***.

8. *Per contra*, learned counsel for the respondent has opposed both the petitions. It is argued that the complaint discloses all the ingredients of the offence under Section 138 of the NI Act. The cheques in question were issued by Parvesh Lakra, who of his own took upon the liability of his father. These cheques were dishonoured for insufficiency of funds and the amount was not

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paid despite service of legal notice. A presumption under Section 139 of the NI Act arises in favour of the complainant. Whether the cheques were issued in discharge of a legally enforceable debt is a question of fact, which can be decided only after evidence is led at the trial. Kamal Kishore had also assured the complainant about encashment of the cheques. Hence, it is urged that the petitions are without merit and liable to be dismissed.

9. This Court has heard the rival submissions at considerable length, besides going through the material placed on record.

10. At the outset, it may be noticed that while dealing with a petition for quashing of a complaint under Section 138 of the NI Act, a Court is ordinarily required to proceed on the allegations made in the complaint and should not adjudicate upon disputed questions of fact. The Hon'ble Supreme Court in ***M/s Gimpex Private Limited vs. Manoj Goel, (2022) 11 SCC 705*** has cautioned that whether a cheque issued pursuant to a settlement arises out of a legal liability is ordinarily a matter of trial. The present petitions, however, do not require any disputed fact to be decided. They can be decided on the own case of the complainant as pleaded in the impugned complaint and on the judgments passed in the earlier complaints, about which there is no dispute.

11. The ingredients of an offence under Section 138 of the NI Act were summarised by the Hon'ble Supreme Court in ***Lalit Kumar Sharma's case (supra)***. The first two of them are the existence of a legally enforceable debt and the drawing of the cheque for discharge of that debt or liability, in whole or in part. A reading of paragraph 1 of the impugned complaint shows the debt of Rs.18,00,000/- to have been owed by Kamal Kishore and not by Parvesh Lakra. The complainant had already filed cases under Section 138 of

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the NI Act against Kamal Kishore for recovery of that very debt. The cheques in question were issued by Parvesh Lakra "on behalf of the settlement" of those cases, so as to step into the shoes of his father. There is no allegation of any independent transaction between the complainant and Parvesh Lakra. It is also not the case of the complainant that he withdrew the earlier complaints or gave up his claim in them on receipt of the cheques. On the contrary, he pursued them to their final conclusion. The impugned complaint and the earlier complaints, thus, arise out of one and the same underlying liability.

12. Reference can be made to ***Lalit Kumar Sharma's case (supra)***, wherein a complaint had been filed on dishonour of cheques issued by the directors of a company. During its pendency, a settlement was arrived at, under which a fresh cheque was issued on the understanding that the complaint would be withdrawn. However, the complaint was not withdrawn and ended in conviction, while the fresh cheque was also dishonoured and became the subject of a second complaint. The Hon'ble Supreme Court held that the second cheque, having been issued in terms of a compromise which did not fructify, did not create a new liability. The second complaint was, therefore, held to be not maintainable. The relevant observations read as under:-

> "15. Evidently, therefore, the second cheque was issued in terms of the compromise. **It did not create a new liability. As the compromise did not fructify, the same cannot be said to have been issued towards payment of debt.**
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> 16. Ingredients of Section 138 of the Act are as under :
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> (i) that there is a legally enforceable debt;

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> (ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and
>
> (iii) that the cheque so issued had been returned due to insufficiency of funds.
>
> 17. Thus, the second cheque was issued by Manish Arora for the purpose of arriving at a settlement. The said cheque was not issued in discharge of the debt or liability of the Company of which the appellants were said to be the Directors. **There was only one transaction between Shri Ashish Narula, Shri Manish Arora, Directors of the Company and the complainant. They have already been punished. Thus, the question of entertaining the second complaint did not arise.** It was, in our opinion, wholly misconceived. xxx xxx xxx"

13. The law on the point was considered in detail by a three-Judge Bench of the Hon'ble Supreme Court in ***Gimpex's case (supra)***. It was held that once the parties enter into a settlement, the settlement subsumes the original complaint and dishonour of the cheques issued under it gives rise to a fresh cause of action. It was also held that ***Lalit Kumar Sharma's case (supra)*** does not lay down an inflexible rule and the question depends on the facts of each case. At the same time, the Hon'ble Supreme Court emphasised that a complainant cannot pursue two prosecutions for one underlying liability. It explained ***Lalit Kumar Sharma's case (supra)*** as a case where the first complaint had been taken to its logical conclusion. The relevant observations read as under:-

> "39. A contrary interpretation, which allows for the complainant to pursue both the original complaint and the consequences arising out of the settlement agreement,

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> would lead to contradictory results. First, it would allow for the accused to be prosecuted and undergo trial for two different complaints, which in its essence arise out of one underlying legal liability. Second, the accused would then face criminal liability for not just the violation of the original agreement of the transaction which had resulted in issuance of the first set of cheques, but also the cheques issued pursuant to the compromise deed. xxx xxx xxx
>
> 40. Thus, in our view, a complainant cannot pursue two parallel prosecutions for the same underlying transaction. Once a settlement agreement has been entered into by the parties, the proceedings in the original complaint cannot be sustained and a fresh cause of action accrues to the complainant under the terms of the settlement deed. xxx xxx xxx
>
> 42. xxx xxx xxx Thus, the decision in Lalit Kumar Sharma (supra) is not applicable in the present case as there was already an adjudication on the question of liability and a conviction with respect to the first cheque. The second complaint was misconceived as the trial in the first complaint had been taken to its logical conclusion and there remained no pending liability. Thus, there were no parallel proceedings that were pending with regards to the same transaction. The first complaint had concluded, only after which the Court observed that the second complaint could not be initiated. In fact, Lalit Kumar Sharma (supra) bolsters the case that multiple prosecutions cannot arise from one legal liability under Section 138 of the NI Act and parties must either go to trial or compromise and settle the matter."

14. Reference can also be made to ***Arun Kumar vs. Anita Mishra and others, (2020) 16 SCC 118***, wherein the accused had been convicted on the

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first complaint. During the pendency of his appeal, the matter was settled before the Lok Adalat in acknowledgment of the adjudicated liability. The cheque issued pursuant to the order of the Lok Adalat was dishonoured. The Hon'ble Supreme Court held that its dishonour gave rise to a fresh cause of action under Section 138 of the NI Act. It may be noticed that the judgment of the Madhya Pradesh High Court in ***Anita Mishra's case (supra)***, relied upon by learned counsel for the petitioners, was set aside by the Hon'ble Supreme Court in that very case. This Court, therefore, places no reliance upon it.

15. A conjoint reading of the above judgments shows that there is no real conflict between them. ***Gimpex's case (supra)*** and ***Arun Kumar's case (supra)*** recognise that a cheque issued under a settlement can give rise to a fresh cause of action. In ***Gimpex's case (supra)***, the settlement had been partly acted upon and the original complaints were quashed to give effect to it. In ***Arun Kumar's case (supra)***, the settlement was recorded by the Lok Adalat after the liability stood adjudicated. The award of the Lok Adalat had the force of a decree. The common ratio running through all the three judgments is that one legal liability cannot give rise to multiple prosecutions under Section 138 of the NI Act. The complainant must either go to trial on the original complaint or abide by the settlement. Where he chooses to take the original complaint to its logical conclusion, the cheque issued under the abandoned settlement cannot be made the basis of a second prosecution. This is precisely what was held in ***Lalit Kumar Sharma's case (supra)*** and explained in paragraph 42 of ***Gimpex's case (supra)***.

16. Now coming to the facts of the present case, the complainant never treated the settlement as having subsumed the earlier complaints. He

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neither withdrew them nor sought their disposal in terms of the settlement. Instead, he prosecuted them to the end and obtained the judgments dated 28.10.2024. These have resulted in conviction of Kamal Kishore in two cases with compensation of Rs.34,00,000/-, which is far in excess of the entire loan of Rs.18,00,000/-. In the third case, the accused was acquitted on a ground relating to the statutory notice. Having chosen so, the complainant cannot prosecute the son and the father once again on the cheques issued under the very settlement which he himself chose to discard. The present case is thus squarely covered by ***Lalit Kumar Sharma's case (supra)***. The concerns noticed in paragraph 39 of ***Gimpex's case (supra)*** also apply with full force, as continuance of the impugned complaint would expose the petitioners to a second prosecution for the same underlying liability.

17. Reference can also be made to ***Prabhakiran Jain's case (supra)***, wherein the Delhi High Court quashed a complaint founded on a cheque issued under a settlement, as the complainant had disregarded the settlement and continued the earlier complaints for the same debt. It was held that the settlement had become *non est* in such a situation and no liability could be said to have accrued under it.

18. It is true that the expression "any debt or other liability" used in Section 138 of the NI Act is wide enough to cover a cheque issued by a person to discharge the debt of another. The question here, however, is not whether the son could have validly discharged the debt of his father. The question is whether the same debt can be made the subject of a second prosecution after the complainant has chosen to pursue the original complaints to their

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conclusion. The presumption under Section 139 of the NI Act is rebuttable. In the present case, it stands displaced by the own allegations of the complainant.

19. Insofar as Kamal Kishore is concerned, there is yet another reason for quashing the proceedings against him. According to the complainant himself, both the cheques were issued by accused No.1 Parvesh Lakra. Kamal Kishore is neither the drawer nor a signatory of the cheques. The Hon'ble Supreme Court in ***Aparna A. Shah vs. Sheth Developers Private Limited and another, (2013) 8 SCC 71*** has held that only the drawer of a cheque can be prosecuted under Section 138 of the NI Act. It was further held that the culpability attached to dishonour of a cheque cannot be extended to those on whose behalf the cheque is issued, except in a case covered by Section 141 of the NI Act. The relevant observations read as under:-

> "22. In the light of the above discussion, **we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted.** xxx xxx xxx
>
> 23. We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. **The culpability attached to dishonour of a cheque can, in no case "except in case of Section 141 of the N.I. Act" be extended to those on whose behalf the cheque is issued.**

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> **This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act.** xxx xxx xxx"

20. In the present case, the cheques were admittedly issued on behalf of Kamal Kishore, to settle his own debt. The averment that he also assured the complainant about their encashment does not make him the drawer. The complaint invokes Section 141 of the NI Act, but that provision is attracted only where the offence is committed by a company, which includes a firm or other association of individuals. No such entity has been arrayed as an accused. The summoning of Kamal Kishore on the cheques of his son is, therefore, not sustainable on this ground as well.

21. In view of the above discussion, this Court is of the considered opinion that continuation of the proceedings arising out of the impugned complaint against the petitioners would amount to an abuse of the process of the Court. Accordingly, both the petitions are allowed. Complaint No.NACT-541 of 2016 dated 06.10.2016 titled as ***"Devi Singh v. Parvesh Lakra and another"*** (Annexure P-4), pending before the Court of learned Judicial Magistrate First Class, Palwal, along with summoning order dated 01.06.2017 (Annexure P-5) and all subsequent proceedings arising therefrom, are hereby quashed qua the petitioners.

22. Pending miscellaneous application(s), if any, also stand disposed of. A photocopy of this order be placed on the file of the connected case.

25.11.2026 **(MANISHA BATRA)**
Waseem R. Ansari **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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