

A.F.R.

Reserved on: 06.01.2026
Delivered on: 28.01.2026



2026:AHC:19277

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 2776 of 2013

Rajesh Kukreja

.....Revisionist(s)

Versus

State of U.P. and Anr.

.....Opposite Party(s)

Counsel for Revisionist(s)	: L.M. Singh
Counsel for Opposite Party(s)	: Alok Kumar Yadav, Govt. Advocate,

Court No. - 53

HON'BLE SAMIT GOPAL, J.

1. Heard Sri L.M. Singh, learned counsel for the revisionist, Sri Ankur Kushwaha, Advocate, holding brief of Sri Alok Kumar Yadav, learned counsel for the opposite party no. 2, Sri Ajay Singh, learned A.G.A.-I for the State/opposite party no. 1 and perused the record.

2. This revision under Section 397/401 Cr.P.C. has been filed by the revisionist - Rajesh Kukreja with the following prayers:-

“It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to set aside the order dated 26.7.2013 passed by M.M. VIIIth, Kanpur Nagar in Complaint Case No. 1091/2012 (M/s. Krishna Hotel Versus Rajesh Kukreja), in the ends of justice.”

3. The facts of the case are that a complaint dated 8.8.2012 was filed by M/s. Krishna Hotels and Developers through its partner Smt. Saroj Dubey wife of Sri Virendra Dubey, against Rajesh Kukreja, Director, Mangalam Restaurant and Hotel Pvt. Ltd., son of Ghanshamdas, for the offence under Section 138 read with 142 of the Negotiable Instruments

Act, 1988, Sections 406 and 420 I.P.C. The complainant filed an affidavit dated 8.8.2012 to be read under Section 202 Cr.P.C. as her statement. The trial court vide its order dated 21.11.2012 observed that perusal of the records shows that a complaint has been filed by the M/s Krishna Hotels and Developers through partner Smt. Saroj Dubey whereas cheque nos. 115261, 115262, 115263, 115264, 199008, 199009, 199010, 199011, 199013, 199014 and 199015 all of Rs.2,00,000/- each, dated 15.04.2012 have been drawn in favour of Hotel Paradise whereas the complaint has been filed by M/s. Krishna Hotels and Developers through partner Smt. Saroj Dubey, whereas the complaint had to be filed by Hotel Paradise through its representative. It further directed that the complainant by the next date should clarify the same. Subsequently vide order impugned dated 26.7.2013 passed by the Metropolitan Magistrate, Court No. 8, Kanpur Nagar. The court concerned after considering the complaint, the statement of the complainant under Section 200 Cr.P.C. and that of the witnesses under Section 202 Cr.P.C. came to the conclusion that offence under Section 138 N.I. Act is made out against Rajesh Kukreja and thus summoned him under the said section. The said order is thus under challenge before this Court.

4. Counter affidavit on behalf of the opposite party no.2 dated 16.12.2013 and rejoinder affidavit by the revisionist to the same dated 24.2.2014 have been filed which are on the record.

5. The dispute thus in the present matter relates to cheque nos. 115261, 115262, 115263, 115264, 199008, 199009, 199010, 199011, 199013, 199014 and 199015 all of Rs.2,00,000/- each, dated 15.04.2012, drawn on Bank of India, Karolbagh Branch, New Delhi issued in favour of Hotel Paradise by Mangalam Restaurant & Hotels Pvt. Ltd.

6. The argument in crux of learned counsel for the revisionist is that the proceedings of the present matter were initiated on the basis of a complaint dated 08.08.2012 filed by M/s. Krishna Hotels and Developers through its partner Smt. Saroj Dubey adult wife of Sri Virendra Dubey against the revisionist under the provisions of the

Negotiable Instruments Act and Indian Penal Code in which the Court of Metropolitan Magistrate, VIIIth, Kanpur Nagar vide order dated 21.11.2012 directed the complainant to clarify the fact that cheques in issue were drawn in the name of Hotel Paradise but the complaint has been filed by M/s Krishna Hotels and Developers through its partner Smt. Saroj Dubey whereas the said complaint should have been filed by Hotel Paradise or its authorized agent. It is submitted that subsequently trial court concerned vide order the impugned dated 26.07.2013 by observing that Hotel Paradise is a unit of M/s Krishna Hotels and Developers proceeded to summon the applicant for offence under Section 138 of the N.I. Act which is totally illegal and knocks out the entire prosecution as the complainant of the present matter has no locus to initiate the proceedings. It is submitted that thus the order impugned deserves to be set aside.

7. Per contra, learned counsel for the opposite party no.2 opposed the arguments and petition for revision vehemently and submitted that the trial court was fully convinced with the facts of the case and thus took cognizance on the complaint after inquiry and summoned the accused/revisionist. It is submitted while placing para-6 of the counter affidavit that Hotel Paradise was given for marketing purpose on the agreement that 50% of the total annual turn over would be paid to the opposite party no. 2. It is further submitted that the opposite party no. 2 is the partner of Hotel Paradise who entered into an oral contract with the revisionist for business purposes and thus she has a locus to file the complaint. Learned counsel for the opposite party no. 2 has placed the judgement of the Apex Court in the case of *M/s Naresh Potteries vs. M/s Aarti Industries and another: 2025 0 INSC 1*, (page-14) and has submitted that the Apex Court has held that if there is a dispute with regards to the person prosecuting the complaint not being authorized to do so, it would be open for the accused to dispute the position and establish the same during the course of the trial and thus the correct situation would be that the revisionist should take up the said objection

at the stage of trial to be decided by the trial court. It is submitted that as such the present revision be dismissed.

8. After having heard learned counsels for the parties and perusing the records, it is evident that the dispute in the present matter relates to cheque nos. 115261, 115262, 115263, 115264, 199008, 199009, 199010, 199011, 199013, 199014 and 199015 all of Rs.2,00,000/- each, dated 15.04.2012, which were issued from Bank of India, Karolbagh Branch, New Delhi in favour of Hotel Paradise. The said cheques stood dishonored. A complaint regarding the same was filed on which initially the trial court raised a query regarding the locus of the complainant but later on took cognizance and summoned the accused/revisionist vide the order impugned. The same is under challenge before this Court.

9. The arguments of learned counsel for the revisionist is with regards to locus of the complainant/opposite party no. 2 to file the said complaint. The complaint in the present matter has been filed by M/s. Krishna Hotels and Developers through its partner Smt. Saroj Dubey wife of Sri Virendra Dubey, against Rajesh Kukreja, Director, Mangalam Restaurant and Hotel Pvt. Ltd., son of Ghanshamdas, mentioning therein in para-1 of the same that she is the owner of M/s. Paradise Hotel and Restaurant, situated at House No.16/62, Civil Lines, Kanpur. The Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act') in its Section 142 states regarding cognizance of offence. The same reads as under:-

“Cognizance of offences.

142. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
- (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

(c) [**Provided** that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(d) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.”

10. Section 7 of the N.I. Act describes “Drawer”, “Drawee”, “Drawee in case of need”, “Acceptor”, “Acceptor for honour” and “Payee”. The same reads as under:-

“7. "Drawer", "Drawee"- The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".

"Drawee in case of need"- When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need".

"Acceptor"- After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

"Acceptor for honour"-When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".

"Payee"-The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".”

11. Section 9 of the N.I. Act defines “holder in due course” which reads as under:-

“9. “Holder in due course”.—“Holder in due course” means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if 1[payable to order,]

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.”

12. In so far as the judgement relied upon by learned counsel for the opposite party no. 2 in the case of **M/s Naresh Potteries (Supra)** is concerned, the facts therein are distinguishable with that of the present case. Perusal of para-26 of the said judgement goes to show that in the said case the complaint was filed by M/s Naresh Potteries through its Manager and Authority-letter holder. The cheque in the said matter was issued from the account of M/s Aarti Industries in the name of M/s Naresh Potteries and thus Naresh Potteries was the holder of the cheque in due course. The fact thus in the said matter are clearly distinguishable with that of the present matter and as such the said judgement would thus not be of any help to the opposite party no. 2 in the present matter.

13. A complaint under Section 138 of the Negotiable Instruments Act, 1881 is not maintainable by a third party. It must be filed by the payee or the holder in due course of cheque. Section 138 of the Act creates the offence of cheque dishonour. Section 142(1)(a) of the Act states clearly that a complaint can be made only by a payee or the holder of cheque in due course. The payee is the person in whose favour cheque is drawn. A holder in due course is a person who lawfully receives the cheque for consideration and becomes entitled to the amount mentioned therein (Section 7 and 9 of the Act). An authorized representative of the payee or holder of cheque can initiate proceedings being the power of attorney holder or the authorized signatory of the company but the complaint is still to be in the name of

payee or holder of the cheque and not in the representatives personal capacity. A third party or a stranger with no legal title to the cheque can not file and institute a complaint. A person who is neither payee nor holder in due course cannot file a complaint even if he is indirectly affected by the transaction. A complaint through a third party being an attorney holder or a manager is valid only if they are duly authorized and the complainant remains the payee or holder of the cheque. In case of companies or firms, entity is the complainant acting through an authorized person. Thus conclusion which can be drawn is that under the Negotiable Instruments Act a complaint by a third party in their own name is not maintainable unless that third party qualifies as holder in due course or acts merely as an authorized representative of the payee or the holder of the cheque.

14. From the discussion as above, it is clear that the opposite party no. 2 had no locus to file the present complaint. The trial court although in its order dated 21.11.2012 had mentioned about the said observation regarding locus of the complainant but later on did not consider the same while passing the order impugned summoning the accused/revisionist.

15. The order impugned dated 26.7.2012 passed by the Metropolitan Magistrate, Court No. 8, Kanpur Nagar in Complaint Case No. 1091/2012 (M/s. Krishna Hotel Versus Rajesh Kukreja) is hereby quashed.

16. The present revision under Sections 397/401 Cr.P.C. is allowed.

17. Pending application(s), if any, shall stand disposed of.

(Samit Gopal,J.)

January 28, 2026
Naresh.