



2026:DHC:2619



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

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*Reserved on: March 18, 2026*  
*Pronounced on: March 30, 2026*

+ **CRL.M.C. 6636/2022, CRL.M.A. 25851/2022**

**SUDHA DEVI**

**....Petitioner**

Through: Mr. Prateek Kumar, Adv.

Versus

**ANIL KUMAR**

**....Respondent**

Through: Mr. Mukesh Bhardwaj, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

### **J U D G M E N T**

1. This Court is proceeding to decide the present petition filed under *Section 482* of the Code of Criminal Procedure, 1973 wherein the petitioner seeks quashing of Criminal Complaint bearing CC NI Act No.26009/2021 entitled "*Anil Kumar vs. Tarun Kumar & Anr.*"<sup>1</sup> pending before the Court of learned Metropolitan Magistrate (NI Act), Digital Court-08, Dwarka Courts, New Delhi<sup>2</sup> as well as the summoning order dated 15.12.2021<sup>3</sup> passed therein and all subsequent proceedings emanating therefrom insofar as they pertain to the petitioner.

2. *Shorn of unnecessary details*, the facts leading present petition is that

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<sup>1</sup> Hereinafter referred as '*compliant case*'

<sup>2</sup> Hereinafter referred as '*Trial Court*'

<sup>3</sup> Hereinafter referred as '*summoning order*'



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the respondent filed a complainant case for an offence punishable under *Section 138* of the Negotiable Instruments Act, 1881<sup>4</sup> against the petitioner and her son before the learned Trial Court wherein he alleged that they had approached him with an offer to sell their house citing financial hardship in August 2020. Subsequently, as per agreement, an Agreement to Sell was to be executed upon the respondent paying of Rs.10,00,000/- to the petitioner, for which the respondent paid various installments of that amount between August 2020 and April 2021. However, despite receipt thereof, the petitioner declined to sell the property and the son of the petitioner issued a cheque bearing no.000018 dated 01.09.2021 drawn on Kotak Mahindra Bank, Najafgarh for Rs.10,00,000/- towards refund of the said amount. The said cheque, upon presentation, was returned unpaid with the endorsement “*funds insufficient*”. Thereafter, the respondent served a Legal Notice dated 27.09.2021 to the petitioner and her son demanding payment of the aforesaid amount within *15 days* from the receipt of the Notice. However, no response was received from the petitioner. Being aggrieved, the respondent filed the aforesaid complaint before the learned Trial Court. The learned Trial Court, thereafter, *vide* order dated 15.12.2021, summoned both the petitioner and her son. It is that summoning order which is under challenge before this Court.

3. In the aforesaid background, learned counsel for the petitioner submitted that the learned Trial Court has passed the summoning order in a

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<sup>4</sup> Hereinafter referred as ‘*NI Act*’



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mechanical manner and without appreciating the foundational requirements of *Section 138* of the NI Act. Moreover, the petitioner is neither the/ a signatory to the cheque in question nor has it been drawn from her account. The petitioner, thus, cannot be prosecuted for the offence under *Section 138* of the NI Act. To buttress his contentions, learned counsel relied upon *Alka Khandu Avhad v. Amar Syamprasad Mishra*<sup>5</sup> and *Shalu Arora v. Tanu Bathla*<sup>6</sup>.

4. *Per contra*, learned counsel for the respondent submitted that the learned Trial Court has passed the summoning order *qua* the petitioner only after due consideration of the materials on record and as such, no interference is warranted by this Court.

5. This Court has heard the learned counsel for the parties and perused the documents on record as also the judgments cited at the Bar.

6. The learned Trial Court could have proceeded to pass the summoning order against the petitioner herein for an offence punishable under *Section 138* of the NI Act, if the essential ingredients therefor which need to be satisfied, are as under: -

- i) The cheque in issue must be drawn by a person from an account maintained by him/ her with a banker; and
- ii) The cheque in issue must be towards the payment of any amount, be it in whole or in part, in discharge of any legally enforceable debt or liability; and

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<sup>5</sup> (2021) 4 SCC 675

<sup>6</sup> 2023:PHHC:152038



iii) The cheque in issue must be returned by the bank unpaid for reasons such as the amount of money standing to the credit of that account is insufficient to honour the said cheque or that it exceeds the amount arranged to be paid from that account.

7. The facts herein reveal that, *admittedly*, neither the cheque in issue has been drawn by the petitioner nor has it been issued from a bank account maintained by her, whether singly or jointly. In fact, it is notable that it is the own case of the respondent that it was the son of the petitioner, who, in discharge of the liability, issued the said cheque. Meaning thereby, the liability, if any, arising from dishonor of the cheque in issue can only be fastened upon the son of the petitioner. Thus, the petitioner has no role to play and cannot be summoned as no complaint under *Section 138* of the NI Act, *per se*, is maintainable against her. The criminal liability is strictly confined to the ‘*drawer*’ of the cheque, which the petitioner herein is not.

8. In fact, the Hon’ble Supreme Court in *Alka Khandu Avhad (supra)* under similar facts and circumstances has held as under:

*“10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI*



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*Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.”*

9. *Ergo*, in view of the aforesaid discussion, the present petition is allowed and the Criminal Complaint bearing CC NI Act No.26009/2021 entitled “*Anil Kumar vs. Tarun Kumar & Anr.*” pending before the learned Trial Court as well as the summoning order dated 15.12.2021 passed therein and all subsequent proceedings emanating therefrom insofar as they pertain to the petitioner are hereby quashed.

10. Accordingly, the present petition along with pending application, is disposed of in the above terms.

**SAURABH BANERJEE, J**

**MARCH 30, 2026**  
**Ab/GA**