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

% *Judgment reserved on: 02.12.2025*
Judgment pronounced on: 27.02.2026
Judgment uploaded on: 27.02.2026

\+ **CRL.REV.P. 723/2014**

DHRVU VARMA & ANR. .....Petitioners
Through: Ms. Harvinder Chawdhary, Mr. Nishesh Sharma, Mr. Atul Kumar Yadav and Mr. Sahietya Singh, Advocates

versus

J K VARMA & ANR. .....Respondents
Through: Mr. Sanjeev Mahajan and Ms. Simran Rao, Advocates

\+ **CRL.REV.P. 724/2014**

DHRUV VARMA & ANR. .....Petitioners
Through: Ms. Harvinder Chawdhary, Mr. Nishesh Sharma, Mr. Atul Kumar Yadav and Mr. Sahietya Singh, Advocates

versus

J K VARMA & ANR. .....Respondents
Through: Mr. Sanjeev Mahajan and Ms. Simran Rao, Advocates

\+ **CRL.REV.P. 725/2014**

DHRUV VARMA & ANR. .....Petitioners
Through: Ms. Harvinder Chawdhary, Mr. Nishesh Sharma, Mr. Atul Kumar Yadav and Mr. Sahietya

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Singh, Advocates

versus

J K VARMA & ANR. .....Respondents

Through: Mr. Sanjeev Mahajan and Ms. Simran Rao, Advocates

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of these three revision petitions, the petitioner has assailed his conviction for offence under Section 138 of the Negotiable Instruments Act, 1881 [hereafter '*NI Act*'], in Complaint Cases Nos. 669/1/2007, 670/1/2007 and 671/1/2007, wherein the petitioner was convicted and sentenced *vide* judgment dated 11.10.2012 and order on sentence dated 31.10.2012, by the learned MM-02 (NI Act), South East District, Saket Courts, Delhi [hereafter '*Trial Court*'], which were upheld by way of the impugned judgment dated 30.09.2024 passed in Criminal Appeal Nos. 18, 19 and 20 of 2014 by the learned ASJ-03, Patiala House Courts, Delhi [hereafter '*Appellate Court*'].

FACTUAL BACKGROUND

2. Brief facts of the case, as set out in the complaints filed under Section 138 of the NI Act are as follows: The complainant (respondent no. 1 herein) had filed complaint cases under Section 138 of the NI Act against five accused persons, i.e. M/s Vasu Tech

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Limited (accused no. 1), Sh. Dhruv Varma (accused no. 2 and petitioner no. 1 herein), Sh. R.L. Varma (accused no. 3), Smt. Aruna Varma (accused no. 4) and M/s Ratan Lal Varma & Sons (HUF) (accused no. 5 and petitioner no. 2 herein). It was alleged that the complainant had entered into an agreement to sell dated 19.10.2001 with accused no. 5 in respect of a flat/space admeasuring 4000 sq. ft. super area on the 4th Floor of Gopal Das Bhawan, 28, Barakhamba Road, New Delhi, for a total sale consideration of ₹40,00,000/-. An amount of ₹5,00,000/- was paid as advance consideration by cheque, and since the premises was under tenancy of M/s Indo Rama Synthetics (I) Ltd., it was agreed that the rent of the said portion would stand assigned to the complainant. The balance sale consideration of ₹35,00,000/- was paid by the complainant partly in cash and partly through security transfer, whereupon a flat buyer agreement was executed. A separate receipt acknowledging receipt of the balance amount was executed by accused no. 2 on behalf of and duly authorised by accused no. 5. At the time of execution of the flat buyer agreement, accused nos. 2 to 4 requested the complainant not to claim rent of about ₹2,50,000/- per month, representing that their closely held family company, accused no. 1, was in urgent need of funds for development of a technological project. It was proposed that the rent received from the tenant would be utilised by accused no. 1 as an advance from the complainant, against which post-dated cheques for ₹35,00,000/- per year towards annual rent, along with an additional ₹5,00,000/-, would be issued. The accused further represented that the amount would be acknowledged by accused no. 1

through promissory notes and acknowledgments of debt. Relying upon the representations and considering his prior dealings with accused nos. 2 to 5, the complainant agreed to the arrangement. Accordingly, accused no.1 issued post-dated cheques of ₹35,00,000/- along with promissory notes and acknowledgments of receipt and utilisation of funds. Before the due dates, the accused sought extensions on the ground that the project was under development, and fresh cheques were issued upon return of the earlier ones. This practice continued for subsequent years, with cheques of ₹35,00,000/- being issued annually towards rent received, each secured by acknowledgments and promissory notes. It was further alleged that accused nos. 2, 3 and 5 agreed to compensate the complainant for losses arising from failure to refund the security deposit of a tenant, ABN Amro Bank, in respect of another jointly-owned premises on the 9th Floor of the same building. Due to such failure, the complainant's portion could not be let out for a considerable period. Certain payments were made intermittently; however, a cheque of ₹25,00,000/- dated 25.04.2006 issued by accused no. 1 towards remaining compensation was dishonoured on presentation with the remark "Funds Insufficient". Upon this dishonour, when the complainant threatened to present all cheques issued towards rental dues, the accused again represented that accused no. 1 was on the verge of commercial success and requested replacement of cheques. Believing the assurances, the complainant accepted six post-dated cheques bearing nos. 370448, 370449, 370450, 370451, 370452 and 370453, each for ₹35,00,000/-, drawn on Central Bank of India,

Jeevan Tara Building, New Delhi, along with fresh acknowledgments and promissory notes. In addition, the accused also replaced the earlier dishonored cheque of ₹25,00,000/- with a new cheque bearing no. 370455 drawn on Central bank of India, Jeevan Tara Building, Parliament Street for ₹25,00,000/-, and also issued one more cheque i.e. cheque bearing no. 370456 dated 14.8.2006, drawn on Central Bank of India, for ₹16,00,000/- in favour of the complainant for the loss of rent incurred in respect of another portion of 735 square feet space/flat on the 9th floor of Gopal Das Bhawan, which amongst others, was jointly owned by the accused and the same could not be let out for about four years due to the accused's failure to refund the security deposit to the last tenant. Thus, a total of 08 cheques were issued by the accused. However, on presentation, the said cheques were dishonoured due to "Insufficient Funds". Despite issuance of statutory legal notice and demand, the accused failed to make payment, leading to filing of complaint cases under Section 138 of the NI Act. Complaint Case Nos. 669/1/07, 670/1/07 and 671/1/07, arising out of dishonour of cheque bearing nos. 370453, 370452 and 370448 respectively, are the subject matter of the present three revision petitions i.e. CRL.REV.P. Nos. 724/2014, 725/2014 and 723/2014 respectively.

3. Accused nos. 1, 2 and 5 were summoned in the complaint cases by the learned Trial Court. Notice under Section 251 of Cr.P.C. was framed against the said accused on 11.03.2008, to which they pleaded not guilty and claimed trial.

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4. In support of his case, the complainant examined himself as CW-1 by way of affidavit, exhibited as Ex. CW-1/CD, reiterating the averments made in the complaints. The complainant primarily relied upon the following documents: (i) copy of the agreement to sell executed between the complainant and accused no. 5 (Ex. CW-1/A); (ii) copy of the receipt acknowledging receipt of sale consideration (Ex. CW-1/B); (iii) copy of the flat buyer agreement (Ex. CW-1/C); (iv) original dishonoured cheques (Ex. CW-1/F); (v) cheque return memos evidencing dishonour of the cheques (Ex. CW-1/F-2 and Ex. CW-1/G); (vi) acknowledgment receipt-cum-promissory note executed by accused no. 1 through accused no. 2, Dhruv Varma (Ex. CW-1/H); (vii) statutory legal notice issued to the accused (Ex. CW-1/I); (viii) postal and courier receipts along with acknowledgments evidencing dispatch and service of the legal notice (Ex. CW-1/J to Ex. CW-1/BB); and (ix) reply to the legal notice sent on behalf of the accused (Ex. CW-1/CC).

5. Thereafter, statements of accused nos. 1, 2 and 5 were recorded under Section 313 Cr.P.C. on 30.04.2011, wherein all incriminating evidence appearing against them was put to the accused. The accused no. 2 (petitioner herein, appearing on behalf of accused no. 1 and 5 also) denied the allegations and claimed innocence.

6. In defence, the petitioner/accused no. 2 Dhruv Varma, examined himself as the sole defence witness (DW-1). No other witness was examined on behalf of the accused.

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7. Vide judgment dated 11.10.2012, learned Trial Court convicted the accused persons for offence under Section 138 of NI Act. By way of order on sentence dated 31.10.2012, the learned Trial Court sentenced the accused persons in following manner: (i) accused no. 1 [M/s Vasu Tech Limited] was sentenced to deposit a fine of Rs.5,000/- in the court, (ii) accused no. 2 [petitioner herein] was sentenced to simple imprisonment for 1 year and further directed to pay compensation to the tune of Rs. 50 lacs to the complainant within one month, and in default thereof, to undergo a further simple imprisonment for 3 months, and (iii) accused no. 5 [M/s RL Varma & Sons (HUF)] was sentenced to pay a fine of Rs. 1 lacs, payable as compensation to the complainant within one month, which is to be paid by the accused no. 2 (petitioner herein) on behalf of accused no. 5.

8. In the three appeals preferred by the said accused persons, the learned Appellate Court upheld the judgment of conviction, however modified the order on sentence passed in three cases, and directed that the accused no. 2 (petitioner no. 1 herein) shall pay a consolidated sum of Rs. 1 crore to the complainant as compensation and in default thereof, to undergo one year simple imprisonment, whereas accused no. 1 and accused no. 5 each shall also pay Rs. 25 lakhs to the complainant.

9. Aggrieved by the aforesaid decisions, the petitioners Dhruv Varma and M/s Ratan Lal Varma & Sons (HUF) have preferred these petitions.

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SUBMISSIONS BEFORE THE COURT

10. The petitioner, who argued the matter in person and also filed detailed written submissions, contended that the scope of adjudication in the present complaints was strictly confined to examining whether the transaction as pleaded in the complaints was legally sustainable on the basis of the evidence on record. It is submitted that no other alleged or purported transaction, including any alleged cash loans, could be imported into the adjudication, as the same did not form part of the complaints. It is argued that the petitioner had consistently denied the transaction as alleged by the complainant. According to the petitioner, the complainant had, in fact, advanced certain cash loans to accused no. 2, for which post-dated cheques and documents were taken merely as collateral security. It was contended that upon repayment of the cash loans, the complainant misused the security cheques and documents to institute false complaint cases. It was urged that this defence was taken at the earliest opportunity, including in the reply to the legal notice, during cross-examination of the complainant, and through defence evidence. The petitioner further submits that there was no admission of any legally enforceable liability at any stage of the proceedings. It is argued that the alleged cash loans, even if assumed, were not part of the complaints, were denied by the complainant, and could not constitute any admission of liability under the complaints. According to the petitioner, both the learned Trial Court and the learned Appellate Court erred in law by basing their findings on an unrelated transaction not forming part of the complaints.

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11. Assailing the concurrent findings, the petitioner contends that the statutory presumptions under Sections 118 and 139 of the NI Act stood duly rebutted. It is argued that the alleged sale of property and the entire transaction set up by the complainant were false. The agreements to sell and flat buyer agreements were mere security documents, which were neither acted upon nor enforced. It is contended that no sale of 4000 sq. ft. of space ever took place, particularly when the karta of R.L. Varma & Sons (HUF) had not signed the alleged sale documents, rendering the transaction invalid. Further, there was no consideration for the sale, and the alleged advance payment of ₹5,00,000/- was only a loan which stood repaid through two cheques of ₹2,50,000/- each, a fact stated in the reply to the legal notice and not denied by the complainant. It is further contended that there was no transfer of security deposit in respect of the tenanted premises, and that the complainant himself admitted during cross-examination that he neither verified the quantum of rent nor the security deposit with the tenant. It is argued that the complainant failed to prove payment of any substantial cash amount towards consideration, as he could neither disclose the source of funds nor produce any supporting documents. Emphasis is also placed on the conduct of the complainant to argue that no genuine sale transaction ever took place. It is submitted that the complainant neither sought registration or mutation of the alleged property nor paid property tax in respect thereof. It is further contended that the complainant never dealt with the tenant, never informed the tenant about any alleged transfer of ownership, and never received rent

directly, which falsifies the claim of ownership and rental income. The petitioner further disputes the complainant's claim regarding annual rent of ₹30,00,000/-, submitting that no evidence was produced to establish such rent and that the complainant admitted to not having verified the lease terms. It is also argued that the complainant failed to specify the particular year for which the cheques in question were allegedly issued.

12. It is additionally contended that there was no basis for inclusion of an alleged interest component of ₹5,00,000/- in each cheque of ₹35,00,000/-, and that it was implausible for the interest amount to remain constant over several years without any agreed rate or supporting document. The petitioner further points out that the alleged transaction was not reflected in the complainant's income tax returns, either as rental income or as a loan advanced. It is also argued that the alleged arrangement permitting the accused to receive rent as a loan was unsupported by any document and was based solely on oral assertions. The complainant's own admissions in cross-examination are relied upon to contend that no written agreement or correspondence existed in this regard. The enforceability of the promissory notes is also questioned by the petitioner who appears in person, as they did not reflect the alleged transaction and were admittedly replaced from time to time. The petitioner further contends that the Memorandum of Understanding relied upon by the complainant did not amount to any admission of liability, particularly since it was withdrawn and was not executed as part of court proceedings. On these grounds, it is prayed that the impugned

judgments be set aside and the petitioner be acquitted in the present case.

13. ***Conversely***, the learned counsel appearing for the respondent–complainant argues that the scope of interference in revisional jurisdiction is extremely limited. It is submitted that while appellate jurisdiction is co-extensive with that of the Trial Court in so far as appreciation and re-appreciation of evidence is concerned, a revisional court is required to confine itself to examining the legality, propriety and correctness of the findings, as also whether the subordinate courts have acted within the bounds of their jurisdiction. It is argued that in the present case, no illegality, perversity or jurisdictional error has been pointed out in the concurrent judgments of the learned Trial Court and the learned Appellate Court. According to the respondent, the petitioner, having failed before two courts below, is merely seeking a re-appreciation of evidence in the garb of a revision petition, which is impermissible in law. The learned counsel submits that the issuance of the cheques in question is admitted, the liability in respect thereof stands admitted, and receipt of the statutory legal notice under Section 138 of the NI Act is also not disputed. It is contended that in the absence of any denial of these foundational facts, no ground is made out for interference by this Court in exercise of its revisional powers. It is argued that Sections 118, 138 and 139 of the NI Act raise a statutory presumption that the cheques were issued towards discharge of a legally enforceable debt or liability. The burden to rebut the said presumption lies squarely on the accused, which, according to learned counsel, the petitioner has failed to

discharge. It is submitted that the defence of the cheques being issued as "security cheques" has remained a bald assertion, unsupported by any credible evidence.

14. The learned counsel further contends that the petitioner has, in fact, admitted the transaction and the liability. It is argued that the reply to the statutory legal notice, exhibited as Ex. CW-1/CC, contains an admission of issuance of cheques and subsisting liability, which has been deliberately concealed by the petitioner. It is submitted that the petitioner himself admitted that the liability as on the date of dishonour aggregated to about ₹2.5 crores, corresponding to the value of the cheques issued. It is also argued that the petitioner has suppressed material facts relating to subsequent conduct. The learned counsel submits that after conviction in another cheque dishonour case, the petitioner approached the complainant for settlement and agreed to pay a sum of ₹4.10 crores against a total liability of ₹2.51 crores for the period 2002–2007. The petitioner admitted execution of the Memorandum of Understanding dated 20.08.2009, exhibited as Ex. DW-1/C-5, during sentencing proceedings, and obtained leniency on the basis of such admission.

15. It is further contended that even after dismissal of his appeal by the learned ASJ, Patiala House Courts, in respect of another cheque of ₹35,00,000/-, the petitioner again undertook before the appellate court to abide by the terms of the MOU, as reflected in Ex. DW-1/C-6, and thereby avoided imprisonment. It is argued that despite taking advantage of such undertakings and admissions, the petitioner later

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resiled from the settlement and continued to contest the proceedings. It is contended that the petitioner has taken inconsistent stands across proceedings. It is argued that while denying the sale transaction and liability in the present revision petitions, the petitioner admitted the sale and financial arrangement in contempt proceedings before this Court, and reliance is placed on an affidavit filed by the petitioner in W.P.(C) No. 7653 of 2011, wherein the petitioner acknowledged execution of the agreement dated 19.10.2001 in respect of 4000 sq. ft. at Gopal Das Bhawan, receipt of substantial consideration, and utilisation of the transaction for raising finances for his business. It is argued that such admissions demolish the defence now sought to be raised by the petitioner. In view of the aforesaid submissions, the learned counsel for the respondent–complainant contends that the revision petitions are devoid of merit, and are liable to be dismissed.

16. This Court has **heard** arguments addressed by the petitioner as well as the learned counsel for the respondent, and has perused the material on record.

ANALYSIS & FINDINGS

17. The case set out by the complainant, in a nutshell, is that the cheques in question were issued by the accused towards discharge of a legally enforceable liability arising out of the arrangement between the parties relating to the sale of property and assignment of rent, and that upon presentation, the said cheques were dishonoured, thereby attracting the offence under Section 138 of the NI Act.

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18. Before proceeding further, it would be apposite to briefly advert to the essential ingredients for constituting an offence under Section 138 of the NI Act. In ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel:*** *(2023) 1 SCC 578* case the Supreme Court had observed as under:

> "11. Section 138 of the Act provides that a drawer of a cheque is deemed to have committed the offence if the following ingredients are fulfilled:
>
> (i) A cheque drawn for the payment of any amount of money to another person;
>
> (ii) The cheque is drawn for the discharge of the 'whole or part' of any debt or other liability. 'Debt or other liability' means legally enforceable debt or other liability; and
>
> (iii) The cheque is returned by the bank unpaid because of insufficient funds.
>
> However, unless the stipulations in the proviso are fulfilled the offence is not deemed to be committed. The conditions in the proviso are as follows:
>
> (i) The cheque must be presented in the bank within six months from the date on which it was drawn or within the period of its validity;
>
> (ii) The holder of the cheque 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 from the receipt of the notice from the bank that the cheque was returned dishonoured; and
>
> (iii) The holder of the cheque fails to make the payment of the said amount of money within fifteen days from the receipt of the notice…"

19. In the present case, at the outset, it is apposite to note that the learned Trial Court, in its judgment, has recorded that the proceedings against accused no. 1, i.e. M/s Vasu Tech Limited, and accused no. 5, i.e. M/s RL Varma & Sons (HUF), were conducted through accused

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no. 2, i.e. the petitioner no. 1 herein. It was further noted that the petitioner admitted in his cross-examination that he had been the Managing Director of accused no. 1 as well as the authorised signatory of accused no. 5 for more than fifteen years. In view thereof, the learned Trial Court concluded that the petitioner was managing the affairs of accused nos.1 and 5 and was responsible for their acts and conduct. No material has been shown before this Court to dislodge the said factual finding.

20. In the case at hand, several foundational facts remain undisputed. Most importantly, the petitioner has not disputed his signatures on the cheques in question, nor has he denied the issuance of the said cheques in favour of the complainant. Once the execution of the cheques is admitted, the statutory presumption under Section 139 of the NI Act necessarily comes into play. Consequently, it is to be presumed that the cheques were issued towards discharge of a legally enforceable debt or liability, and the burden shifts upon the petitioner to rebut the said presumption by leading cogent and convincing evidence.

21. The core defence of the petitioner is that the cheques in question were not issued towards payment of rent and additional interest, as alleged by the complainant, but were merely security cheques handed over to secure repayment of alleged cash loans advanced by the complainant to the petitioner.

22. In this context, this Court first takes note of the cross-examination of the complainant (CW-1). A perusal of the record

reveals that specific suggestions were put to the complainant to the effect that he had been advancing cash loans to the petitioner since 1998 and that in the year 2001, cash loans amounting to approximately ₹2.03 crores were advanced to him. The complainant clearly denied these suggestions. He further denied that the alleged agreements and guarantees were executed merely as collateral security for such cash loans, or that he had been receiving repayments towards principal and interest after the year 2001. He also denied the suggestion that post-dated cheques were obtained only as further security. In fact, all suggestions put to the complainant seeking to project the cheques and documents as security instruments were consistently denied by him.

23. On the other hand, when the evidence of the petitioner-accused, examined as DW-1, is analysed, it emerges – as correctly noted by the learned Trial Court – that the petitioner admitted that the rate of interest allegedly applicable to the claimed cash loans, as referred to in his reply to the legal notice, was never finalised. He also admitted that no such alleged cash loans, running into about ₹2 crores, were reflected in his books of accounts. These admissions substantially dent the plausibility of the defence sought to be raised and lend support to the conclusion drawn by the learned Trial Court that the petitioner failed to probabilise his version.

24. Furthermore, the case of the complainant with regard to execution of documents is clearly supported by the material on record, including the admissions made by the petitioner in his defence

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evidence. Notably, the petitioner, in his cross-examination, has not disputed his signatures on documents Ex. CW-1/A, Ex. CW-1/B and Ex. CW-1/C, which are the agreement to sell, the receipt acknowledging consideration, and the flat buyer agreement, respectively. He has further admitted that he signed the said documents as the authorised signatory of accused no. 5. The petitioner herein has also admitted that in document Ex. CW-1/A, at page 4, it is specifically recorded that the rent due from the flat/space from 19.06.2002 shall stand assigned to the buyer (complainant herein), and that the said handwritten portion is in his own handwriting. He has further admitted that the cheque mentioned in the first clause on page 4 of Ex. CW-1/A was received and encashed by accused no. 5. Additionally, the petitioner has admitted that the promissory note Ex. CW-1/H was handed over along with the cheque in question to the complainant and that the said promissory note bears his signatures.

25. Thus, this is a case where the petitioner has not disputed the genuineness of any of the documents or his signatures thereon, relied upon by the complainant. An overall conspectus of the documentary evidence clearly demonstrates that agreements were entered into between the parties, a clear understanding was also arrived at between the parties regarding the property and rental income, and cheques were issued by the petitioner in favour of the complainant. *Despite these admitted facts*, the petitioner seeks to dispute the very intent of the documents by contending that, although signed by him, they were never meant to be acted upon.

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26. Such an argument cannot help the case of the petitioner. It is unlikely for a reasonable person that merely for securing alleged cash loans, the petitioner would execute multiple documents relating to sale and purchase of immovable property, assignment of rental income, and issue promissory notes, all of which were acted upon in part. As rightly observed by the learned Trial Court, if the documents were never intended to be acted upon, there is no explanation forthcoming as to why the cheque mentioned in the first clause at page 4 of Ex. CW-1/A was encashed by accused no. 5. The petitioner has also failed to examine any independent witness or produce any material to substantiate his plea that the documents were executed only as collateral security and were not intended to be given legal effect. It may also be noted that while the complainant had specifically pleaded that the subject flat/space was under tenancy of M/s Indo Rama Synthetics (I) Ltd. at the time of execution of the agreement to sell, the petitioner, in his cross-examination as DW-1, expressly admitted that 4000 sq. ft. super area at Gopal Das Bhawan was under the tenancy of the said tenant in the year 2001, which lends further credence to the version set up by the complainant.

27. Moreover, even in the defence evidence, during cross-examination, the petitioner admitted that at the time when the cheques were presented for encashment in February 2007, an amount of about ₹2 to ₹2.5 crores was payable to the complainant. It is noteworthy that a total of eight cheques were presented by the complainant, aggregating to ₹2.51 crores. This admission of the petitioner therefore

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also fortifies the conclusion that the cheques were issued in favour of the complainant towards discharge of a subsisting liability.

28. Another important aspect of the case pertains to the Memorandum of Understanding dated 20.08.2009, the execution of which is admitted by the petitioner in his cross-examination in the present cases. In this regard, it is relevant to note that out of the eight cheques forming part of the overall transaction, the petitioner had already been convicted in respect of one cheque of ₹35,00,000/- *vide* judgment dated 06.08.2009 passed in Complaint Case No. 3122/01/09. At the stage of sentencing in the said case, the petitioner entered into a Memorandum of Understanding running into sixteen pages, whereby he had agreed to pay a sum of ₹4.10 crores in full and final settlement of all cheques issued by him in favour of the complainant, aggregating to ₹2.51 crores. The factum of execution of the said MOU is not disputed by the petitioner. Once the petitioner himself entered into an MOU acknowledging issuance of the cheques in question and his liability to repay the amounts covered thereby, he cannot now be permitted to resile from such admission and contend that the MOU is not to be relied upon in the present proceedings. It is further material to note that pursuant to the said MOU, the petitioner paid a sum of ₹75,00,000/- to the complainant by way of demand draft on the same day, leading to withdrawal of the complaint case relating to cheque bearing no. 370449. The petitioner also paid an amount of ₹35,00,000/- to the complainant for withdrawal of the complaint case pertaining to cheque bearing no. 370456. These payments clearly demonstrate that the petitioner was acknowledging

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his subsisting liability and was acting upon the terms of the MOU by making substantial payments towards settlement of the cheques in question.

29. In light of the aforesaid material, facts and circumstances, this Court is of the considered view that the arguments raised by the petitioner are wholly devoid of merit and are liable to be rejected. The contentions regarding the complainant not having sought mutation of the property in his name, not having independently verified the details of the tenant, or not having ascertained the exact quantum of rent or not contacted the tenant, do not advance the petitioner's case in any manner. This is so particularly in view of the fact that the petitioner, in his own defence evidence and during cross-examination, has admitted execution of all documents placed on record by the complainant, including his signatures thereon. He has also admitted the existence of a liability payable to the complainant, though he seeks to assert that the same stood repaid, for which no cogent or convincing proof has been produced. Further, the petitioner's conduct in proceedings before other courts, where similar complaint cases under Section 138 of the NI Act arising out of dishonour of cheques were pending, or where he stood convicted, including execution of the Memorandum of Understanding dated 20.08.2009, wherein he again admitted issuance of eight cheques, including the three cheques forming subject matter of the present cases, and agreed to repay the entire outstanding amount, coupled with the statements made by him before the courts in that regard, clearly outweigh the contentions now sought to be raised before this Court.

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30. In the totality of the circumstances, the petitioner has failed to rebut the statutory presumption under Section 139 of the NI Act, and the complainant has successfully proved all the essential ingredients of the offence under Section 138 of the NI Act.

31. Consequently, no perversity, illegality or infirmity can be found in the concurrent findings recorded by the learned Trial Court and the learned Appellate Court so as to warrant interference in exercise of revisional jurisdiction.

32. Insofar as the order on sentence is concerned, this Court is of the considered view that the learned Trial Court had taken a correct and balanced approach by imposing a fine of ₹50,00,000/- in each case (against the cheque amount of ₹35,00,000/- in each case) to be paid by accused no.2 / petitioner no.1 herein, and a fine of ₹1,00,000/- to be paid by accused no.5 / petitioner no.2 herein, as compensation to the respondent–complainant. The impugned appellate judgment does not disclose any cogent reasons for modifying the said sentence and imposing a consolidated fine of ₹1,00,00,000/- in each case, payable by accused no.2, and ₹25,00,000/- each payable by accused nos.1 and 5. Accordingly, the impugned judgment is set aside to the extent it relates to the order on sentence, and the order on sentence dated 31.10.2012 passed by the learned Trial Court is restored.

33. The present petitions are accordingly dismissed, *albeit*, in above terms.

34. Copy of this judgment be sent to the learned Trial Court for necessary information and action.

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35. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

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