

**Reserved on : 09.02.2026**  
**Pronounced on : 04.03.2026**



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04<sup>TH</sup> DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.11207 OF 2025

**BETWEEN:**

- 1 . M/S. ND DEVELOPERS PRIVATE LTD.,  
HAVING ITS REGISTERED OFFICE AT  
SRI BALAJI NILAYA  
NO.25, 3<sup>RD</sup> MAIN, 5<sup>TH</sup> CROSS  
DOLLARS COLONY, NS PALYA  
BTM 2<sup>ND</sup> STAGE, BENGALURU  
KARNATAKA – 560 076.
- 2 . MOHAMMED KHADAR KHAN DURANI  
S/O MOHAMMED SHOUKAT HUSSAIN KHAN DURANI  
AGED ABOUT 64 YEARS  
MANAGING DIRECTOR  
N.D.DEVELOPERS PRIVATE LIMITED  
HAVING ITS REGISTERED OFFICE AT  
SRI BALAJI NILAYA  
NO.25, 3<sup>RD</sup> MAIN, 5<sup>TH</sup> CROSS  
DOLLARS COLONY, N S PALYA  
BTM 2<sup>ND</sup> STAGE  
BENGALURU, KARNATAKA – 560 076.
- 3 . MOHAMMED YAHYAA KHAN DURANI  
S/O MOHAMMED KHADAR KHAN DURANI

AGED ABOUT 31 YEARS  
DIRECTOR  
N.D.DEVELOPERS PRIVATE LIMITED  
HAVING ITS REGISTERED OFFICE AT  
SRI BALAJI NILAYA  
NO.25, 3<sup>RD</sup> MAIN  
5<sup>TH</sup> CROSS, DOLLARS COLONY  
N S PALYA, BTM 2<sup>ND</sup> STAGE  
BENGALURU, KARNATAKA – 560 076.

- 4 . MOHAMMED ZEESHAN KHAN DURANI  
DIRECTOR  
S/O MOHAMMED KHADAR KHAN DURANI  
AGED ABOUT 32 YEARS  
N.D.DEVELOPERS PRIVATE LIMITED  
HAVING ITS REGISTERED OFFICE AT  
SRI BALAJI NILAYA, NO.25,  
3<sup>RD</sup> MAIN, 5<sup>TH</sup> CROSS  
DOLLARS COLONY, N.S. PALYA  
BTM 2<sup>ND</sup> STAGE  
BENGALURU, KARNATAKA – 560 076.
- 5 . HAJIRA DURANI  
DIRECTOR  
W/O MUNTHASHEER AHMED KHAN  
AGED ABOUT 37 YEARS  
N D DEVELOPERS PRIVATE LIMITED  
HAVING ITS REGISTERED OFFICE AT  
SRI BALAJI NILAYA, NO.25,  
3<sup>RD</sup> MAIN, 5<sup>TH</sup> CROSS  
DOLLARS COLONY, N.S. PALYA  
BTM 2<sup>ND</sup> STAGE, BENGALURU  
KARNATAKA – 560 076.
- 6 . AYESHA SULTANA  
DIRECTOR  
S/O MOHAMMED KHADAR KHAN DURANI  
AGED ABOUT 60 YEARS

N D DEVELOPERS PRIVATE LIMITED  
HAVING ITS REGISTERED OFFICE AT  
SRI BALAJI NILAYA, NO.25,  
3<sup>RD</sup> MAIN, 5<sup>TH</sup> CROSS, DOLLARS COLONY  
NS PALYA, BTM 2<sup>ND</sup> STAGE  
BENGALURU, KARNATAKA – 560 076

ALL ARE R/AT NO. 401  
8<sup>TH</sup> MAIN, 8<sup>TH</sup> CROSS  
NEAR UDUPI GARDEN HOTEL  
MICO LAYOUT, BTM 2<sup>ND</sup> STAGE  
BENGALURU, KARNATAKA – 560 076.

... PETITIONERS

(BY SMT.SUMATHI PAULINE, ADVOCATE)

**AND:**

RITESH RAUSHAN  
S/O PURNA CHANDRA VARMA  
AGED ABOUT 45 YEARS  
RESIDING AT VILLA NO.194  
RBD STILL WATERS  
SILVER COUNTY ROAD  
OFF HARALU ROAD  
BENGALURU, KARNATAKA – 560 102.

... RESPONDENT

(BY SRI CHINMAY J. MIRJI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF  
BNSS, 2023, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN  
C.C.NO.1446/2025 PENDING ON THE FILE OF XIII ACJM,  
BANGALORE FOR AN OFFENCES U/S 138 OF NEGOTIABLE  
INSTRUMENTS ACT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.02.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioners are before this Court calling in question proceedings in C.C.No.1446 of 2025 pending before the XIII Additional Chief Judicial Magistrate, Bengaluru arising out of PCR 11453 of 2024 filed by the complainant alleging offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short).

2. Facts adumbrated are as follows: -

2.1. The petitioners are accused 1 to 6 and respondent is the complainant. The 1<sup>st</sup> petitioner is a Private Limited Company incorporated under the provisions of the Companies Act, 1956. The 2<sup>nd</sup> petitioner is the Managing Director of the 1<sup>st</sup> petitioner/Company and others are Directors of the Company. The complainant and his wife purchase flat bearing No.G-02, Block E in

the 1<sup>st</sup> petitioner/Company's project named ND Passion Elite. It is the averment in the complaint that the complainant had availed a No Pre-EMI Scheme, wherein the Company was obligated to remit payment of interest on home loan until possession was handed over. There was a breach in contractual obligation between the two and the complainant avers that he was compelled to make payment of ₹41,75,634/- on account of non-handing over of possession. Towards the said amount, the Company issues a cheque bearing No.149728 amounting to ₹41,00,000/-. The cheque was yet to be presented.

2.2. A Police notice comes to be issued to the Branch Manager, Bank of Maharashtra under Sections 91 and 102 of the Cr.P.C., which directs debit freezing of the accounts of the 1<sup>st</sup> petitioner/Company and the 2<sup>nd</sup> petitioner/Managing Director in furtherance of the investigation in Crime No.92 of 2022 registered for offences punishable under Sections 420 and 506 read with 34 of the IPC and another crime in Crime No.116 of 2023 registered for offences punishable under Sections 406 and 420 of the IPC. This is an admitted fact. The debit freeze of the accounts of the 1<sup>st</sup>

petitioner/Company and the 2<sup>nd</sup> petitioner/Managing Director happens on 24-05-2024. The complainant, to whom the cheque on 09-03-2024 had been issued, presents it on 05-06-2024 for realization. The cheque is dishonored with an endorsement "account blocked situation covered in 21 25". The complainant then begins the process of initiating proceedings against the petitioners for dishonor of the cheque by issuing a notice on 04-07-2024.

2.3. The petitioners sent a reply to the notice, at which point in time the petitioners were not aware of the fact that the account of the petitioners was frozen. They come to know of the same on 26-07-2024. The complainant then registers a private complaint under Section 223 of the BNSS for offence punishable under Section 138 of the Act in PCR No.11453 of 2024. Sworn statement of the complainant is recorded, cognizance is taken and summons are issued in C.C.No.1446 of 2025 on 10-01-2025. Issuance of summons is what has driven the petitioners to this Court in the subject petition.

3. Heard Smt. Sumathi Pauline, learned counsel appearing for the petitioners and Sri Chinmay J. Mirji, learned counsel appearing for the respondent.

4. The learned counsel appearing for the petitioner would vehemently contend that the cheque was not issued against a legally enforceable debt or as compensation. The cheque was only issued until completion of the project. The cheque was dishonoured on account of the endorsement issued of debit freeze, which would mean that the petitioners cannot be hauled up for the proceedings, as the account was frozen and the amount could not be realized by the complainant. The learned counsel would further contend that the petitioners have reimbursed the entire amount to the complainant by giving him two additional plots in the project, which the complainant admits in the complaint and has also entered into a settlement by executing a settlement deed before RERA on 24-06-2022 itself. Therefore, there is no claim pending against these petitioners that should be fulfilled to the respondent.

5. Per contra, the learned counsel appearing for the respondent would refute the submissions contending that cheque is issued in acknowledgment of the debt owed by the Company. The Company subsequently alienated the flats allotted to the complainant and sold them to third parties. When the complainant staged a protest, a post-dated cheque amounting to ₹41,00,000/- was issued to the complainant. The cheque is issued against a legally enforceable debt, to settle the liability from the breach of contractual obligation, under the No Pre-EMI Scheme. He would contend that the presumption under Sections 118 and 139 of the Act would operate against the petitioners. Whether the account is frozen or otherwise is immaterial. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the only issue that falls for consideration in the case at hand is:

**“Whether proceedings could be initiated against the petitioners on dishonor of cheque when the reason for dishonor is the account being debit frozen?”**

7. The afore-narrated facts, dates and link in the chain of events are a matter of record. Reiteration of three dates become necessary. The instrument that is now the subject matter of proceedings before the concerned Court is the cheque bearing No.149728 amounting to ₹41/- lakhs issued on 09-03-2024. Two crimes are registered against the petitioners in Crime No.92 of 2022 and 116 of 2023 for offences punishable under Sections 406, 420, 504 and 506 of the IPC. The Investigating Officer investigating into the said crimes directs debit freezement of the account of the Company and its Managing Director, the 2<sup>nd</sup> petitioner, on 24-05-2024 till the investigation in the said crime would get completed. The police notice to the Bank requesting debit freezement reads as follows:

“Date: 24-05-2024

POLICE NOTICE  
(Under Section 91 & 102 Cr.P.C)  
(Most urgent)

To  
The Bank Manager,  
Maharashtra Bank,  
Bangalore City

Sir,  
Sub: Request to Debit freeze and furnish the account details – reg.  
Ref: Shivanagara PS cr.No.92/2022 u/s 420, 506 r/w 34 IPC, and 116/2023 u/s 406, 420 IPC.

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With reference to the above subject, the brief facts of the case are that the complaint Cr.No.92/2022 u/s 420, 506 r/w 34 IPC, and 116/2023 u/s 406, 420 IPC and the same is under investigation.

Accordingly, you are hereby requested to Debit Freeze the below Maharashtra Bank account and furnish the following particulars of the following account Nos. at the earliest:

Sl. No.	Account No.
1	60322483326
2	60321377613

1. Kindly given confirmation letter for Debit Freezing the above account numbers and provide the current balance.”

Therefore, it is an admitted fact that the account over which the cheque was issued was debit frozen after issuance of the cheque in issue. The complainant then presents the cheque for realization. The cheque gets dishonored and the Bank issues the following endorsement:

“ICICI BANK

June 5,2024

RITESH RAUSHAN  
VILLA NO.194 RBD STILLWATERS,  
SILVER COUNTY ROAD, OFF HARLUR ROAD  
BANGALORE – 560 102 KARNATKA  
Mob: 919686944553

Cheque return for your ICICI Bank Account xxxx7143

Dear Customer,

We value your relationship with ICICI Bank

We write to inform you that the enclosed Cheque **149728** for **₹4,100,000.00** deposited in your account is returned unrealized in clearing on **June 5, 2024** due to reason:

**Account blocked situation covered in 2125**

The applicable charges will be debited to your account.

For any clarification or more information, you can call our Customer Care or visit the nearest ICICI Bank Branch.

Sincerely,  
Sd/-  
Team ICICI Bank.”

The endorsement is 'account blocked situation covered in 2125'. The subject endorsement is said to be inability of the accused to clear the cheque if the account is blocked. The complainant then issues a notice to the accused as obtaining under the Act. The notice is replied by the petitioners. At the time when the reply was rendered by the petitioners, the petitioners were not aware of the

fact of debit freeze ment of the account. They come to know of it only on 26-07-2024, when the Bank communicates to the petitioners about debit freeze ment. The mail trail is indicative of the said fact. The debit freeze order is attached to the mail. The communications and debit freeze ment are as follows:

“Wed., Jul 24, 2024 at 2.47 p.m.

Dear Sir/Madam,

As regards to the above subject, I am bringing to your notice that I am not able to do any withdrawal from the bank accounts. Please rectify explain the problem as soon as possible and share the supportive details.

Saving Bank and Current Account details as mentioned below for your information.

1. Name: MOHAMMED KHADERKHAN DURANI  
A/c No. 60321377613  
Bank: Bank of Maharashtra.
2. Name: N.D. DEVELOPERS PVT.LTD.  
A/c No. 60322483326  
Bank: Bank of Maharashtra.

.... ....

Fri.Jul.26, 2024 at 9.50 AM

Dear Sir/Madam,

As regards to the above subject, I am bringing to your notice that I am not able to do any withdrawal from the bank accounts. Please rectify, explain the problem as soon as possible and share the supportive details.”

.... ....

"Debit freeze order. Pdf.  
366K"

Therefore, the freezement comes to the notice of the petitioners on 26-07-2024, after the reply to the statutory notice was issued on 15-07-2024. The complainant registers the complaint under Section 223 of the BNSS on 17-08-2024. The issue would be, whether the proceedings under Section 138 of the Act can be permitted to continue on account of dishonor of cheque due to blockage of the account or debit freezing of the account owing to different crimes registered against the petitioners.

8. Several High Courts have considered this issue and therefore, I deem it appropriate to notice the judicial landscape concerning the issue.

8.1. The High Court of Delhi in the case of **VIJAY CHAUDHARY v. GYAN CHAND JAIN**<sup>1</sup>, holds as follows:

".... ...."

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<sup>1</sup> 2008 SCC OnLine Del. 554

**10. From the aforesaid, it appears that to rope in the drawer of the cheque within the ambit of Section 138 of the Act, when the cheque is dishonoured for ostensible reasons different from those specifically provided under the Act, it is necessary to establish that the ostensible reason is one attributable to a voluntary act/omission of the drawer, and that the same is merely a ruse to avoid payment of the cheque and the real reason is the insufficiency of funds in the account, or that the amount of the cheque exceeds the arrangement that the drawer has with the bank under an agreement.**

... ..

**22.** A perusal of the above extract shows that the Supreme Court consciously used the words "which was demonstrated by the fact that there was no sufficient balance in the account to discharge their liability". This observation of the Supreme Court also reaffirms my view that **whatever be the reason for dishonour of the cheque, it has to be correlated to the insufficiency of funds in the account or to the lack of arrangement made by the drawer with his bank under an agreement.**

**23.** Turning to the facts of the present case, one finds that the attachment by an order of the Court in this case was after the alleged issuance of the cheque, but prior to its presentation for encashment. **The attachment of the bank account of the petitioner had the effect of disabling the petitioner from operating or maintaining the said account. The petitioner could not exercise his right either to deposit into or withdraw from the said account.** Even if it were to be assumed for the sake of argument, that the cheque was in fact issued in discharge of the petitioner's liability owed to the respondent, and that at the time of issuance of the cheque, he did not have sufficient balance in the account, or an arrangement with his banker, in case the bank account had not been attached under the orders of a Court, nothing prevented the petitioner from either depositing money in his account or entering into an agreement with his bank to arrange for sufficient funds in the account, to be able to honour the cheque in question by the date when the said cheque could have been presented for payment at the earliest. This is so because there was sufficient time gap i.e of nearly one year and eight months

between the date of alleged issue of cheque and the date of its presentation. As held by the Hon'ble Supreme Court in *Modi Cements* (supra), the issuance of the cheque without having sufficient balance in the account of the drawer does not by itself tantamount to the commission of an offence u/s 138 of the Act. However, **in the facts of this case, the petitioner could not have, even if he would have so desired, either deposited funds in his account or otherwise made arrangements for the payment of the cheque upon its presentation by entering into an agreement with the bank, since there was a Court attachment on the bank account of the drawer. This Court attachment was by a Court ceased of the case arising out of FIR No. 283/2005 u/s 406/420/467/468/471 & 120-B IPC registered with P.S. Connaught Place. The act of attachment of the bank account of the drawer/petitioner cannot be said to be a voluntary act of the drawer. It cannot be said that the petitioner contrived to have the account attached only for the purpose of warding of the penal consequences u/s 138 of the Act. It also cannot be said that after the attachment of the bank account, the same was being maintained by the petitioner. For an account to be maintained by an account holder, it is essential that he is in a position to operate the said account by either depositing monies therein or by withdrawing money therefrom. He should be in a position to give effective instructions to his banker with whom the account is maintained. However, in the present case, once the account has been attached by an order of the Court, the said account could not be operated by the petitioner. He could not have issue any binding instructions to his banker, and the banker was not obliged to honour any of his instructions in relation to the said account, so long as the attachment under the court orders continued."**

8.2. The High Court of Punjab and Haryana in **RAJESH MEENA v. STATE OF HARYANA**<sup>2</sup>, has held as follows:

".... .... ."

**20. A careful analysis of section 138 of the NI Act reveals that the first and foremost requirement to maintain the complaint under section 138 of the NI Act is that the cheque issued by the account holder must be from the account maintained by account holder with the drawer-bank for discharge in whole or in part of any debt or other liability.**

**21. The expression "account maintained by him" as appearing in section 138 of the NI Act carries great significance and meaning. The dictionary meaning of "maintain" (as contained in Oxford Dictionary) is defined as : the act of making the state or situation continue. Therefore, the said expression "account maintained by him" cannot be construed narrowly to mean that if the account belongs to the accused, the necessary ingredient would be complete. This expression "account maintained by him" must necessarily include that the said account is not only alive and operative, but the account holder is capable of executing command to govern the financial transactions which include the clearance of cheques, etc. The authority and control of the account holder upon the account must exist on the effective date, i. e., when the cheque becomes valid for presentation in the bank. It is settled law that mere issuance of a cheque is not an offence, but it becomes punishable when the said cheque is dishonoured. Mere fact that the record of the drawer bank shows a particular name as account holder would not be sufficient to establish that account is being maintained by the account holder, unless the said account holder holds the authority and control over the said account. In other words, if an account holder is deprived of his authority, control and dominion over the bank account, it cannot be**

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<sup>2</sup> 2019 SCC OnLine P & H 6256

**said that the account is being maintained by the said account holder.**

**22.** Now while advertng to the facts of this case, it is evident that the proceedings against the company were initiated under the provisions of the I and B Code, 2016 and the order in terms of section 14 of the I and B Code was passed on July 21, 2017. **The provisions of the I and B Code, 2016 makes it absolutely clear that whenever a corporate debtor is facing the proceedings before the Adjudicating Authority (National Company Law Tribunal), then the control and management of the said corporate debtor can be vested with the interim resolution professional.**

**23.** It is also not disputed by learned counsel for the parties that Shri Virender Singh already stands appointed as interim resolution professional who is seized of the management and operation of the corporate debtor (accused No. 1). **Admittedly, the post dated cheques were given containing the dates as June 27, 2017 and July 27, 2017 but prior to the effective dates the said account was blocked, which cannot at all be attributed to the account holder, as it was a result of the order passed by the National Company Law Tribunal, New Delhi and therefore, by virtue of the said order, the authority and control of the account holder over the account ceased to exist.**

**24.** At this stage, it will be necessary to note the pleadings in the impugned complaint relating to the legal notice served by the complainant and the reply sent by the accused. The relevant pleadings of the complaint reads as under:

"10. That upon receipt of written intimation of dishonour of cheques of the aforesaid cheques from the banker of accused, the complainant got served legal notice dated October 4, 2017 under sections 138, 141 and 142 of the NI Act. Vide this notice, the accused persons were called upon to make payment of above said dishonoured cheques to the complainant within a period of 15 days from the date of receipt of this notice. The said legal notice was dispatched vide registered acknowledgment due post dated October 6, 2017 on last known and correct addresses of the accused persons. The said legal notice was duly served upon the accused

persons on October 9, 2017 in the ordinary course of postal delivery. The accused persons instead making payment got issued false and frivolous reply dated October 16, 2017 through their counsel. The alleged provision of law as cited in false and frivolous reply dated October 16, 2017 is not applicable and false defence has been put forth to evade legitimate payment of the complainant."

**25.** A perusal of the above makes it clear that the complainant did not disclose the contents of the reply dated October 16, 2017 and drew a veil over this important aspect of the case.

**26.** The said reply dated October 16, 2017 (annexure P4) clearly revealed that because of prohibitory orders by the National Company Law Tribunal, New Delhi, the account in question stood blocked and therefore, the request was made to the complainant to withdraw the legal notice. It was further requested that as and when the accused would get the permission to operate the account of the company, the payment in respect of the cheques in question would be made to the complainant. It is also relevant to note that the said reply also contains a specific averment that intervention by the company-National Company Law Tribunal was conveyed to the complainant even before the presentation of the cheque and request was made to the complainant to not to present the cheque. The reply dated October 16, 2017 (annexure P4) is reproduced below:

"1. That paragraph No. 1 of your legal notice is admitted hence needs no reply.

2. That paragraph No. 2 of your legal notice is correct and admitted.

3. That paragraph No. 3 of your legal notice is correct and admitted.

4. That paragraph No. 4 of your legal notice is correct and admitted.

5. That paragraph No. 5 of your legal notice it is submitted that my client intimated you not to present the above said cheques because the hon'ble National

Company Law Tribunal, New Delhi vide order dated July 21, 2017 have blocked the account as well as moveable and immovable properties of my client under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The copy of the order dated July 21, 2017 is attached herewith.

6. That in reply to paragraph No. 6 of your legal notice it is submitted that my client has replied above in detail in paragraph No. 5 of the reply.

7. That paragraph No. 7 of your legal notice is wrong and denied. My client had not guilty intention from the inception and my client dishonestly with a view to cause wrongful loss to your client.

8. That paragraph No. 8 of your legal notice is matter of record.

I through this legal notice all upon you to advise your client to withdraw the above said legal notice because my client will pay the amount of cheques as and when my client do the work and the hon'ble National Company Law Tribunal, New Delhi give permission to operate the account of the company."

**27.** The above averment in the present petition is not refuted either by way of filing the reply or by way of oral arguments. **The only stand adopted by the respondent is that since the cheque is dishonoured, therefore, the prosecution of the petitioner accused is inevitable. In the given facts, this court has no hesitation in holding that on the date when the cheques were presented by the complainant to the drawee-bank, the account holder was not maintaining the said account. Resultantly, in the absence of this material condition it cannot be said that the offence punishable under section 138 of the NI Act would be made out.**

**28.** It is true that in one of the cases, i. e., CRM-M No. 15771 of 2018, the impugned complaint does not contain the pleading regarding reply to the legal notice

**but at the same time, it is established that the cheque in the said complaint was for a date which was subsequent to the other cheques, and therefore, the response of the accused was well within the knowledge of the complainant. Even otherwise, there is no conflict between the parties regarding the material facts including the proceedings before the National Company Law Tribunal and its consequences."**

8.3. The High Court of Delhi, again in **BEST BUILDWELL PVT. LTD., v. R.D.SALES**<sup>3</sup>, following the judgment of **VIJAY CHAUDHARY** *supra* holds as follows:

".... .... ."

**10.** Section 138 of the Negotiable Instruments Act, 1881, makes it clear that a cheque's dishonour does not automatically lead to prosecution under the Act. For prosecution to be initiated, the dishonoured cheque must have been returned unpaid either due to insufficient funds in the account or because the cheque exceeds the amount arranged to be paid from the account by an agreement between the account holder and the bank. In this context, the dishonour must result from the account holder's failure to maintain the necessary balance or limit. This principle has been upheld in the case of *Standard Chartered Bank v. State*, 2007 SCC OnLine Del 1105.

**11.** Perusal of the record indicates that on 18.01.2024, the Commissioner of the CGST Delhi South Commissionerate issued a communication to the State Bank of India, provisionally attaching the petitioner's bank account under Section 83 of the CGST Act, 2017, and prohibiting any debits without prior departmental approval (**Annexure P3**). This order effectively froze the account and restricted all transactions. The same was confirmed by the bank's letter dated 03.03.2025, stating that a "STOP" had been marked on Account No. 41070762619 on 02.02.2024 pursuant to the CGST attachment order dated

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<sup>3</sup> 2025 SCC OnLine Del. 4267

22.01.2024, and that no transactions could be permitted until further instructions were received from the department.

**12.** Perusal of the reply sent by the petitioner to the legal notice sent by the respondent indicates further that in January 2024, the respondents approached the petitioners seeking prior consent as per their mutual understanding regarding the presentation of the cheques. At that time, the petitioners informed the respondents about the provisional attachment order issued by the CGST Department. They clearly communicated that the bank account had been frozen and no debits could be made without departmental approval.

**13. The Court finds that when the petitioners gave the cheques to the respondent, they were not aware that their bank account would be frozen. As soon as they got the information about the account being attached by the CGST Department, they informed the respondent to avoid any trouble for either side.**

**14.** Under Section 138 of the NI Act, an offence is committed when a cheque is drawn from an account maintained by the drawer and it is returned unpaid due to insufficient funds. **Even though the cheque return memo may mention its reason for dishonor as "insufficient funds", the fact remains that, the petitioners' account was frozen by the CGST Department, and thus, it could not be said to be "maintained" by them at the relevant time. Since the petitioners were unable to operate the account or issue valid instructions to the bank due to the attachment, the essential ingredients of Section 138 are not fulfilled. Even if the funds in the account were insufficient at the time of presentation of the cheques, the account having been frozen by the CGST, it would not have been possible for the petitioner to maintain sufficiency of funds in his account for the cheques to be honoured. This position finds support in *Vijay Chaudhary v. Gyan Chand Jain*, 2008 SCC OnLine Del 554, where it was *inter alia* held as under;**

"xxx

**23. ... For an account to be maintained by an account holder, it is essential that he is in a position to operate the said account by either depositing monies therein or by withdrawing money therefrom. He should be in a position to give effective instructions to his banker with whom the account is maintained. However, in the present case, once the account has been attached by an order of the Court, the said account could not be operated by the petitioner. He could not have issued any binding instructions to his banker, and the banker was not obliged to honour any of his instructions in relation to the said account, so long as the attachment under the court orders continued."**

8.4. Again in **FARHAD SURI v. PRAVEEN CHOUDHARY**<sup>4</sup>, the High Court of Delhi holds as follows:

".... ....

**Whether Dishonour of Cheques due to "ACCOUNT BLOCKED", would Constitute an Offence Under Section 138 NI Act?:**

**74.** The next aspect which needs to be considered is whether the cheque dishonoured for the reason **Account Blocked** would be covered in the term **insufficiency of funds**, as mandated in Section 138 NI Act.

**75.** To constitute an offence under Section 138 NI Act, mere issuance of a cheque is not sufficient; it becomes punishable only when the cheque is dishonoured for the reason insufficiency of funds. Likewise, **merely showing that the holder of an account with the particular bank would also not sufficient to show that it is being maintained by the account holder, unless he has the authority and control over the said account. If the holder is deprived of his**

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<sup>4</sup> 2025 SCC OnLine Del 9198

***authority and control over the bank account, it cannot be said that the account was being maintained by him.***

**76. In the case of *Ceasefire Industries Ltd. v. State*, 2017 SCC OnLine Del 8280, Co-ordinate Bench of this Court observed that it is not every return of a cheque unpaid which leads to prosecution of an offence under Section 138 NI Act. It has to be taken into account that even if the reason given for dishonour of the cheque is "Account Closed" or "Payment Stopped" it can fall under Section 138 NI Act, if it is shown that there was insufficiency of funds in the account of the holder at the time of presentation of the cheque. *The reason for dishonour of the cheque in the present case is "Account blocked". Where the dishonour of cheque was for the reason that the account had been frozen in terms of some statutory authority, the offence as envisaged in Section 138 NI Act, would not be made out.***

**77. This aspect was specifically discussed in *Rajesh Meena v. State of Haryana*, CRM-M-14537-2018 decided on 01.07.2019 by Punjab & Haryana High Court, wherein it was noted that the expression "account maintained by him" as appearing in Section 138 N.I. Act, carries great significance. The *Oxford dictionary* meaning of "maintain" is an act of making the state or situation continue. Therefore, the expression "account maintained by him" cannot be construed narrowly to mean that if the account belongs to the accused, the necessary ingredient would be complete. ***This expression "account maintained by him" must necessarily include that the said account is not only alive and operative, but the account holder is capable of executing a command to govern the financial transactions which include the clearance of cheques etc..*** The authority and control of the account holder upon the account must exist on the effective date i.e. when the cheque becomes valid for presentation in the bank. ***It was thus, held that the term "account blocked" for the reasons not attributable to the account holder would not bring the case under Section 138 NI Act.*****

**78. The impact of NCLT proceedings in the context of Section 138 NI Act, was examined by the Apex Court in**

the case of *Vishnoo Mittal v. Shakti Trading*, (2025) 9 SCC 417, in 2018, wherein the moratorium was imposed and management of the Corporate Debtor was taken over by the IRP as per Section 17 IBC (*Management of Affairs of Corporate Debtor by Interim Resolution Professional*). When the Notice was issued to the Appellant in the Complaint under Section 138 NI Act, he was not in charge of the Corporate Debtor as he was suspended from his position as the Director of the Corporate Debtor as soon as IRP was appointed in 2018. *It was thus, held that all the bank accounts of the Corporate Debtor were operating under the instructions of the IRP, hence, it was not possible for the Appellant to repay the amount in light of Section 17.*

**79.** *In the present case as well, the cheques presented in 2020, were dishonoured with remarks of "ACCOUNT BLOCKED". The dishonour occurred not due to insufficiency of funds, but due to statutory prohibition on payments during winding-up proceedings and appointment of IRP. This circumstance falls squarely outside the ambit of Section 138, as the essential ingredient of dishonour due to inadequate funds, remains unestablished. Thus, the necessary ingredient to bring home the offence under Section 138 NI has not been proved.*

**80.** It is also relevant to note that *vide* Reply dated 11.12.2020 to the demand notice, the fact regarding liquidation of the Company had been specifically brought to the notice of the Complainant. Despite this, the Complaints were filed and the Ld. MM took cognizance without examining these crucial aspect.

**81.** *To conclude, the dishonour of the cheques on the ground of "ACCOUNT BLOCKED" due to proceedings under NCLT and Accounts being taken over by IRP/Liquidator, precludes liability under Section 138 NI Act as it cannot be said that he is maintaining the Account. Therefore, the offence under Section 138 NI Act, would not be made out."*

(Emphasis supplied at each instance)

The High Court of Delhi in **VIJAY CHAUDHARY** *supra* has in unequivocal terms held that when the account is attached and frozen by a Court order, the accused drawer could not have operated his account. The ostensible reason for dishonouring of the cheque has to be a voluntary act in the control of the accused and if the cheque has been dishonoured for being debit frozen it cannot be the voluntary act of the accused. The accused should be capable of executing the command to govern financial transaction which include clearance of cheques. Again, in the case of **BEST BUILDWELL** *supra*, the High Court of Delhi reiterates this issue, while considering the fact that GST authorities had debit frozen the account of the accused therein. In **RAJESH MEENA** *supra*, the Punjab and Haryana High Court was considering the issue of the account being blocked due to the declaration of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 and the taking over of the company by the Interim Resolution Professional. In the case of **FARHAD SURI** *supra*, the High Court of Delhi reiterates **RAJESH MEENA** *supra*.

9. The learned counsel for the respondent/complainant has also relied on several judgments of the Apex Court or different High Courts, all of them were rendered on facts obtaining in those cases. Most of the cases relied on were on stop payment by the accused or when payments are stopped by a Court order. The complaint, in a few cases, was held to be maintainable when cheque was dishonoured, as it was for the accused to demonstrate that he was not aware of the freezing of the account when the cheque was drawn and the account had sufficient balance. The Madras High Court also in **CHALLANI RANK JEWELLERY v. ASHOK KUMAR JAIN - 2024 SCC OnLine Mad. 10675**, considers this issue. Therefore, the jurisprudence is replete on both quashment of the proceedings and refusing to quash the proceedings.

10. The judgments quoted hereinabove *qua* quashment of proceedings would become applicable to the facts of the case as the petitioners have demonstrated that, at the time when they issued the cheque, the account was active and there was sufficient balance in the account and it is only two months after issuance of the cheque, the account was debit frozen, which the petitioners were

not aware. This is also demonstrated by the reply to the notice issued by the complainant. In the reply, the petitioners do not aver about debit freezement, as they were not aware and they became aware of it only on 26-07-2024, when the communication is received from the Bank attaching a debit freeze order.

11. With all these dates and the dates connecting the dots, the very registration of crime against the petitioners would be rendered unsustainable, as the cheque is dishonoured for stop payment not for want of sufficient funds, but account block situation covered in 2125. The Model List of Objections in ANNEXURE D of the Reserve Bank of India Uniform Regulations and Rules for Bankers' Clearing Houses, issued on 17-05-2012, encompasses the various reasons for the return of a dishonoured cheque. **As per the said guidelines, a situation covered under 21 would mean, that the payment is stopped by an attachment order and covered under 25 would mean, that withdrawal is stopped in lieu of insolvency of the account holder.** Therefore, it is a situation where the drawer of the cheque has no control or authority over the account in the case of debit

freezement. In order to become liable for offence under Section 138 of the Act, the accused is required to have control over the account when the cheque becomes due for presentation/realization.

12. In the light of jurisprudence being replete with the judgments quoted hereinabove, the proceedings cannot be permitted to be continued. Exercising my jurisdiction under Section 482 of the Cr.P.C., I deem it appropriate to obliterate the proceedings, failing which, it would result in miscarriage of justice.

13. For the aforesaid reasons, the following:

**ORDER**

- (i) Criminal Petition is ***allowed.***
- (ii) Entire proceedings in C.C.No.1446 of 2025 pending before XIII Additional Chief Judicial Magistrate, Bengaluru stands quashed.

**Sd/-  
(M.NAGAPRASANNA)  
JUDGE**

Bkp  
CT:MJ