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## CASE NOTE

Case Name: M/S Nd Developers Private Ltd vs Ritesh Raushan

Citation: 2026 Supreme (Online)(Kar) 8180

Case Number: Criminal Petition No. 11207 of 2025

Date of Decision: 4/3/2026

Court: The High Court of Karnataka

Coram: The Hon'ble Mr Justice M.Nagaprasanna

### Introduction

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 1881.

### Facts

1) In this case, the petitioners are accused 1 to 6 and the Respondent is the Complainant. The 1st petitioner is a Private limited company incorporated under the provisions of the Companies Act 1956. 2<sup>nd</sup> Petitioner is Managing Director of the first Petitioner Company and 3<sup>rd</sup> to 6<sup>th</sup> Petitioner are other Directors of the Company.

The Complainant, Mr Ritesh Raushan, he along with his wife, purchased a flat in a project called ND Passion Elite, developed by M/s ND developers PVT Ltd. In purchasing of the flat, the company offered a no pre-EMI scheme under which the builder was responsible for paying the interest on the home loan until the possession of the flat was handed over. Hence the buyer does not have to pay any money till the possession of the flat is being transferred to him. But later the builder failed to hand over the possession on time, which forced the complainant to pay Rs. 41,75,634 himself. The inability of the builder to transfer the possession on time had cost the complainant. Further, to compensate for this amount, the builder had issued a check of Rs. 41 lakhs in favour of the complainant that was yet to be presented.

2)A police notice was issued to the Branch Manager Bank of Maharashtra under Section 91 and 102 of the Cr.Pc which direct debit freezing of the account of the 1<sup>st</sup> Petitioner/Company and 2<sup>nd</sup> Petitioner/Managing Director for the investigation in Crime No.92 Of 2022 and 116 of 2023 for offences punishable under Sec 420 and Sec 506 read with Sec 34 of the IPC and Sec 406, Sec 504 of the IPC.

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### **Important Dates and Events:**

- 1) 9/3/2024: Cheque No. 149728 of 41 Lakh was issued to the Complainant by builder
- 2) 24/5/2024: Notice for Debit Freezement of the account of 1<sup>st</sup> and 2<sup>nd</sup> Petitioner
- 3) 5/6/2024: Cheque presented for realization was dishonored
- 4) 4/7/2024: Complainant initiates proceedings for dishonor of the cheque
- 5) 26/7/2024: Petitioners come to know about their frozen account
- 6) Complainant register a Private Complaint u/s 223 of BNSS
- 7) 10/1/2025: Sworn statement of the complainant is recorded, Cognizance is taken and summons are issued

This issuance of summons has driven the petitioners to the Court in the subject petition

### **Issue**

Whether proceedings can be initiated against the petitioners for dishonor of cheque when the reason for dishonor is the account being debit frozen

### **Argument**

**Petitioner:** 1) The Petitioner's primary contention was that the cheque was not issued against a legally enforceable debt or as compensation. It was issued until completion of the project. The cheque was dishonoured on account of endorsement issued of debit freezement. Hence petitioner cannot be hauled up for the proceeding as the account was frozen. Additionally,

2) The petitioners have reimbursed the amount to the complainant by giving two additional plots in the project and Complainant has also entered into a settlement agreement by executing a settlement deed before RERA, Therefore there is no claim pending against this Petitioners.

**Respondent:** 1) The Respondants contended that the cheque was issued in the acknowledgement of the debt owed by the company. The company transferred ownership of the allotted flats and sold them to third parties. When the Complainant protested against this a post-dated cheque of Rs 42 Lakh was issued to the Complainant against a legally enforceable debt, to settle the liability from the breach of contractual obligation arising under Section 118 and 139 of the Negotiable Instruments Act 1881.

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## **Court's Reasoning and Analysis**

Dishonor of cheque due to freezement of the account does not come under the Ambit of offence under Sec 138 Negotiable Instruments Act 1881

### **The Judicial Landscape cited by the Court concerning the issue:**

In *Vijay Chaudhary vs Gyan Chand Jain 2008 SCC OnLine Del. 554* the Court said that 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. So the reason for dishonour of the cheque, must be related to the insufficiency of funds in the account or to the lack of arrangement made by the drawer with his bank under an agreement.

#### **2) *Rajesh Meena v. State Of Haryana , 2019 SCC OnLine P & H 6256***

To maintain the complaint under Sec 138 of NI act it is essential that the account is alive, operative and account holder is capable of executing command to govern the financial transactions, while the cheque issued by the account holder must be from the account maintained by him with the drawer-bank for discharge in whole or in part of any debt or other liability. On the date when the cheques were presented by the complainant to the drawee-bank, the account holder was not maintaining the said account. Hence it cannot be said that the offence punishable under section 138 of the NI Act would be made out.

#### **3) *Best Buildwell PVT. LTD., v. R.D.Sales 2025 SCC OnLine Del. 4267***

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. 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.

## **Final Decision and Order**

The High Court allowed the said criminal petition and concluded that the Dishonour of cheque due to Account blocked / debit freeze is beyond the control of the drawer and does not come under the ambit of Section 138 NI Act.while the entire proceedings in C.C.No.1446 of 2025 pending before XIII Additional Chief Judicial Magistrate, Bengaluru was quashed.

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## Analysis

The most important aspect of this judgement is, it has elaborately explained what amounts to the Dishonour of Cheque. In the present case the cheque was presented in 2020, was dishonoured with remarks of “ACCOUNT BLOCKED”, 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. The dishonour occurred not due to insufficiency of funds, but due freezement of the account.

To conclude, the dishonour of the cheques 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 NI Act, would not be made out.”

The Court observed that at the time when the petitioner 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. 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 reasons for the return of a dishonoured cheque

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. Hence In the light of jurisprudence being replete with the judgments Entire proceedings in C.C.No.1446 of 2025 was quashed.

In order to become liable for offence under Sec 138 essential requirements are:

- 1) Insufficient funds, or Exceeding arrangement with the bank
- 2) The accused is required to have control over the account during realization of the cheque
- 3) Account must be active at the time of issuance of cheque

In present case, The freezement of the bank account of the petitioner disabled the petitioner from operating the said account, consequently he could not exercise his right either to deposit into or withdraw from the said account, he was not in a position to give effective instructions to his banker with whom the account is maintained. Hence he was not held liable u/s 138 of Negotiable Instruments Act.