Ashok Singh vs State Of U.P on 2 April, 2025

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

2025 INSC 427

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.4171 OF 2024

ASHOK SINGH …APPELLANT

VERSUS

STATE OF UTTAR PRADESH & ANR. …RESPONDENTS
R1: STATE OF UTTAR PRADESH
R2: RAVINDRA PRATAP SINGH

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

The present appeal impugns the Final Judgment and Order dated 21.02.2024 in Criminal Revision Petition No.619 of 2020 (hereinafter referred to as the 'Impugned Order') 1 passed by the High Court of Judicature at Allahabad, Lucknow Bench (hereinafter referred to as the 2024:AHC-LKO:15310.

'High Court'), allowing the petition and setting aside the concurrent findings of guilt and conviction recorded against respondent no.2 (hereinafter also referred to as the 'accused') in the Order dated 12.04.2019 in Complaint Case No.6650/2012 passed by the Presiding Officer/Additional Court, Room No.5, Lucknow (hereinafter referred to as the 'Trial Court') as later upheld by the Additional Sessions Judge, Court No.1, Lucknow (hereinafter referred to as the 'Appellate Court') vide Order dated 23.10.2020 in Criminal Appeal No.148/2019. FACTS:

> 2. The appellant is the complainant in Complaint Case No.6650/2012. He alleged that he had advanced a loan of Rs.22,00,000/-

(Twenty-Two lakhs) to the respondent no.2 on the assurance that the entire amount will be returned. When the appellant demanded return of the money, the accused issued Cheque No.726716 dated 17.03.2010 for an amount of Rs.22,00,000/- (Twenty-Two lakhs) drawn on the Bank of Baroda. The appellant presented the said cheque for encashment at IDBI Bank, Main Branch, Lucknow. On 07.05.2010, the cheque was dishonoured with the endorsement 'payment stopped by

drawer' and the cheque along with receipt was returned. Subsequently, the appellant attempted to contact the accused seeking return of the money but the accused neither met him nor returned the money. The appellant sent a Legal Notice dated 18.05.2010 through Registered Post. However, the accused did not reply to the Notice. Hence, a complaint case was registered by the appellant.

3. On an appreciation of facts and the evidence presented before it, the Trial Court vide Order dated 12.04.2019 found the accused guilty of having committed an offence under Section 138 2 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act') and sentenced him to one year of simple imprisonment along with fine of Rs.35,00,000/- (Rupees Thirty-Five Lakhs). In case of default in making the payment of '138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

> Provided that nothing contained in this section shall apply unless—
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> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
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> (b) the payee or the holder in due course of the cheque, as the case may be, makes 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 of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
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> (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.' fine, a further sentence of three months' simple imprisonment was directed to be served. It was ordered that a sum of Rs.30,00,000/- (Rupees Thirty Lakhs) be given to the complainant as compensation. The appeal preferred by the accused was dismissed by the Appellate Court vide Order dated 23.10.2020 and the Order of the Trial Court was confirmed.

4. The accused filed a criminal revision petition before the High Court which came to be allowed vide the Impugned Order and the conviction and sentence imposed on the accused/respondent no.2 was set aside. While doing so, the High Court noted as under, inter alia:

> 'The complainant has failed to prove his case that the cheque was issued towards discharge of a lawful debt specially when the complainant has failed to disclose details of his Bank Account and date when he withdrew the amount in question and paid to the revisionist as well as the date when he obtained the cheque. Therefore, there are glaring inconsistencies indicating doubt in the complainant's version, hence, the conviction and sentence cannot be sustained.' APPELLANT'S SUBMISSIONS:

5. Mr. Pinaki Addy, learned counsel for the appellant, submitted that the High Court fell in error in upsetting the concurrent findings of facts recorded by the Courts below by re-appreciating and re-analyzing the evidence. It was argued that during the cross-examination of the accused, it was admitted that the intimation regarding loss of the cheque was sent to the police in 2011 i.e., much after the cheque was presented by the appellant on 17.03.2010. The said intimation is dated 12.03.2010 which proves that the document was manufactured in 2011 and back- dated. The intimation also was never converted into a First Information Report (hereinafter referred to as 'FIR'), hence it carries no evidentiary value.

6. It was submitted that the cheque was issued in discharge of loan availed by the accused and hence presumption under Section 118 read with Section 139 of the Act would operate in the appellant's favour. The burden of proof lies on the accused and he has to raise a probable defence. In the absence of any evidence, a mere oral statement that there did not exist any debt would not be sufficient to rebut the presumption, especially when the signature on the cheque has been admitted by the accused in his evidence.

7. It was further submitted that the Trial Court and the Appellate Court have duly considered the evidence on record and have rightly disbelieved the story put forth by the accused and held the prosecution case to have been proved beyond reasonable doubt. The counsel placed reliance on the following decisions: Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197; Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148; Kishan Rao v. Shankargouda, (2018) 8 SCC 165, and; Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287. It was prayed that the appeal be allowed.

RESPONDENT NO.2-ACCUSED'S SUBMISSIONS:

> 8. Per contra, Mr Shadan Farasat, learned senior counsel for the respondent no.2-accused submitted, at the outset, that the Impugned Order is good in law and does not require any interference by this Court.

It was submitted that no proof of withdrawal of Rs.22,00,000/- (Rupees Twenty-Two Lakhs) was placed on record by the complainant. The entire story put forth by the complainant is fictitious and he has failed to prove the circumstances in which the cheque was handed over and the existence of any business relations between the parties.

9. It was submitted that the complainant had also failed to prove his capacity to advance such huge amount of loan in the absence of adducing any evidence viz. ledger, Income-Tax Returns,

money-lending license, etc. In such circumstances, the complainant also failed to prove that the cheque was issued for a legally enforceable debt and such debt existed on the date of presentation of the cheque.

10. It was his contention that the Trial Court as well as the Appellate Court were misled by the appellant about the existence of two complaints by the respondent no.2 and findings of both the Courts on this issue are erroneous. Further, it was argued that the accused never handed over the signed cheque to the appellant and the same was lost while he was travelling from Sultanpur to Raebareli at Atheha Market and Missing Report, in this connection, was also filed on 12.03.2010 at Police Station Udaipur, District Pratapgarh, Uttar Pradesh.

11. Reliance was placed on the decisions in Bir Singh (supra), Rajesh Jain (supra) and Dattatraya v. Sharanappa, 2024 SCC OnLine SC 1899, to highlight that the appellant did not discharge his burden of establishing the factual basis to activate the presumptive clause. It was further submitted, that in any case, the complaint is not maintainable since the drawer of the cheque i.e., the Partnership Firm viz. M/s Sun Enterprises, has not been arrayed as a party. Additionally, learned senior counsel also placed reliance on the decisions in John K John v. Tom Varghese, (2007) 12 SCC 714; Krishna Janardhan Bhat v. Dattatraya G Hegde, (2008) 4 SCC 54, and; G Pankajakshi Amma v. Mathai Mathew (Dead) through LRs., (2004) 12 SCC 83.

12. While it was urged that the appeal be dismissed, without prejudice to the foregoing submissions, learned senior counsel canvassed that the offence under the Act is compoundable and the accused being 58 years of age with no criminal antecedents and the sole bread-earner of his family comprising 8 members, if found and held guilty by this Court, may only be saddled with monetary penalty, and a reasonable time-frame be granted to make such payment.

ANALYSIS, REASONING & CONCLUSION:

13. We have heard learned counsel and learned senior counsel for the respective parties at length.

14. The present case has travelled to this Court from three Courts and this is the fourth Court. At the very first stage, the Trial Court on appreciation of evidence had found that a legally enforceable debt existed in favour of the complainant-appellant payable by the respondent no.2-accused; returned a finding of guilt/conviction, and; sentenced the respondent no.2 to one year simple imprisonment and fine of Rs.35,00,000/- (Rupees Thirty-Five Lakhs). The Appellate Court upheld the findings, whereas the High Court, by the Impugned Order, acquitted the respondent no.2.

15. There can be no dispute that in matters relating to alleged offences under Section 138 of the Act, the complainant has only to establish that the cheque was genuine, presented within time and upon it being dishonoured, due notice was sent within 30 days of such dishonour, to which re-payment must be received within 15 days, failing which a complaint can be preferred by the complainant within one month as contemplated under Section 142 (1)(b) of the Act.

16. On the other hand, the foremost defence available to the accused is to deny the very liability to pay the amount for which the cheque was issued on the ground that it was not a 'legally enforceable debt' under the Act.

17. In the present case, there is no denial apropos the signature on the cheque by the respondent no.2 and, as noted hereinbefore, the stand taken is that the said cheque was lost. This is the reason given by the respondent no.2 to have advised the bank to stop payment due to which the cheque in question was not honoured/encashed. However, the relevant dates beg to tell a different tale. The cheque in question dated 17.03.2010 was presented within time but returned un-encashed on 07.05.2010 with the endorsement 'payment stopped by drawer'. A Legal Notice was also sent by the appellant on 18.05.2010 through Registered Post, i.e., within the stipulated thirty days period, intimating about the dishonour of the cheque. As no reply was proffered by respondent no.2, thus, an inference, albeit rebuttable, could arise that he had no sustainable/valid defence to justify why the cheque in question was dishonoured. Be that as it may, the respondent no.2 avers that no reply was sent as he had not received any Legal Notice.

18. Further, a defence raised by the respondent no.2 was that he had intimated the police of the factum of the cheque being lost. However, upon verification of the said claim, it emerges that such intimation/information reached the police only in the year 2011, though the intimation itself was dated 12.03.2010. Notably, the cheque was presented on 17.03.2010. This sequence strengthens the statutory presumption in favour of the appellant, as it cannot be believed that a cheque having been lost on/about 12.03.2010, the respondent no.2 would intimate the police thereof only in the year 2011, moreso, when the amount involved was a princely sum of Rs.22,00,000/- (Rupees Twenty-Two Lakhs). It is noted that during cross-examination, respondent no.2 admitted that such intimation was sent to the police only in 2011 but never converted into a formal FIR. This further raises serious doubts with regard to the veracity of the accused's claims/defences insofar as the story projected of the cheque having been lost is concerned.

19. The accused asseverates that the cheque was drawn by M/s Sun Enterprises. Respondent no.2-accused was a Partner in the said Partnership Firm. Learned senior counsel drew attention to Aneeta Hada v. Godfather Travels and Tours Private Limited, (2012) 5 SCC 661, where, looking to Section 141 of the Act, the Court held that if the person committing an offence is a 'company', a complaint against its 'director', without arraigning the 'company' as an accused would not be maintainable. By way of Aparna A Shah v. Sheth Developers Private Limited, (2013) 8 SCC 71, it was held that '...under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted.' We are of the view, in the prevalent facts and circumstances, that the dicta in Sunita Palita v. Panchami Stone Quarry, (2022) 10 SCC 152 would apply:

> '36. The High Court also rightly held that the Managing Director or Joint Managing Director would admittedly be in charge of the company and responsible to the company for the conduct of its business by virtue of the office they hold as Managing Director or Joint Manging Director. These persons are in charge of and responsible for the conduct of the business of the company and they get covered under Section 141 of the NI Act. A signatory of a cheque is clearly liable under Sections 138/141 of

the NI Act.

37. The High Court, however, failed to appreciate that none of these appellants were Managing Director or Joint Managing Director of the accused Company. Nor were they signatories of the cheque which was dishonoured.

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40. There can be no doubt that in deciding a criminal revision application under Section 482CrPC for quashing a proceeding under Sections 138/141 of the NI Act, the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of the said sections has to be borne in mind. The provisions of Sections 138/141 of the NI Act create a statutory presumption of dishonesty on the part of the signatory of the cheque, and when the cheque is issued on behalf of a company, also those persons in charge of or responsible for the company or the business of the company. Every person connected with the company does not fall within the ambit of Section 141 of the NI Act. xxx

42. Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89:

2005 SCC (Cri) 1975]. The materials on record clearly show that these appellants were independent, non- executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1: (2015) 3 SCC (Civ) 384: (2015) 3 SCC (Cri) 378] a non-executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.

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48. For the reasons discussed above, the appeal is allowed. The judgment and order [Ashwini Kumar Singh v. Panchami Stone Quarry, 2019 SCC OnLine Cal 4491] of the High Court is set aside. Criminal Case No. AC/121/2017 pending under Sections 138/141 of the NI Act in the Court of Judicial Magistrate, 2nd Court, Suri, Birbhum is quashed insofar as these appellants are concerned. It is made clear that the proceedings may continue against the other accused in the criminal case, including in particular the accused Company, its Managing Director/Additional Managing Director

and/or the signatory of the cheque in question.' (emphasis supplied)

20. No doubt the judgment by 2 learned Judges in Sunita Palita (supra) is innocent of the pronouncement by the 3-Judge Bench in Aneeta Hada (supra). However, Sunita Palita (supra) has taken note of S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89, rendered also by a 3-Judge Bench, which was reiterated in Aneeta Hada (supra). As such, our harmonised reading of these judgments would lead us to the conclusion, on facts herein, that as the signatory of the cheque is arrayed as accused and is also the person in charge, the underlying complaint would be maintainable. Even before us, it has never been urged that the accused, a Partner in M/s Sun Enterprises is not the person in charge thereof.

21. One of the grounds, which weighed heavily with the High Court to acquit the respondent no.2 was that the appellant was unable to prove the source of Rs.22,00,000/- (Rupees Twenty-Two Lakhs) given to the respondent no.2 as loan. Admittedly, the signature on the cheque is of the respondent no.2 himself. The decision in Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106 can be profitably referred to:

> '18. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant- accused. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence.
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> 19. In order to discharge his burden, the accused put forward the defence that in fact, he had had the monetary transaction with the said Shri Jagdishbhai and not with the complainant. In view of such a plea of the appellant-

accused, the question for consideration is as to whether the appellant-accused has shown a reasonable probability of existence of any transaction with Shri Jagdishbhai? In this regard, significant it is to notice that apart from making certain suggestions in the cross-examination, the appellant-accused has not adduced any documentary evidence to satisfy even primarily that there had been some monetary transaction of himself with Shri Jagdishbhai. Of course, one of the allegations of the appellant is that the said stamp paper was given to Shri Jagdishbhai and another factor relied upon is that Shri Jagdishbhai had signed on the stamp paper in question and not the complainant.

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20. Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. The observations of the trial court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been irrelevant factors for consideration of a probable defence of the appellant. Similarly, the factor that the complainant alleged the loan amount to be Rs 22,50,000 and seven cheques being of Rs 3,00,000 each leading to a deficit of Rs 1,50,000, is not even worth consideration for the purpose of the determination of real questions involved in the matter. May be, if the total amount of cheques exceeded the alleged amount of loan, a slender doubt might have arisen, but, in the present matter, the total amount of 7 cheques is lesser than the amount of loan. Significantly, the specific amount of loan (to the tune of Rs 22,50,000) was distinctly stated by the appellant- accused in the aforesaid acknowledgment dated 21-3- 2017.' (emphasis supplied)

22. The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have

summarily rejected such stand, more so when respondent no.2 did not make any serious attempt to dispel/negate such stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross- examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in M/s S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059, we opined:

> '8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court as well as the First Appellate Court and Trial Court on this issue is sound. Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present cases, has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts and/or Income Tax Returns, the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. In this regard, we may make profitable reference to the decision in Tedhi Singh v Narayan Dass Mahant, (2022) 6 SCC 735:
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> '10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the crossexamination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.' (emphasis supplied)' (underlining in original;

emphasis supplied by us in bold)

23. In the present case, on an overall circumspection of the entire facts and circumstances of the case, we find that the appellant succeeded in establishing his case and the Orders passed by the Trial Court and the Appellate Court did not warrant any interference. The High Court erred in overturning the concurrent findings of guilt and consequential conviction by the Trial Court and the Appellate Court.

24. Accordingly, for reasons aforesaid, the appeal is allowed. The Impugned Order is set aside. Though the natural consequence would entail revival of the conviction and sentence imposed upon the respondent no.2 i.e., one year simple imprisonment and fine of Rs.35,00,000/- (Rupees Thirty-Five Lakhs), but having regard to the parting submissions of learned senior counsel for the accused/respondent no.2, to the effect that considering his age, he may be only subjected to fine and not imprisonment, we are inclined to modify the sentence to only payment of a fine restricted to Rs.32,00,000/- (Rupees Thirty-Two Lakhs). Acceding to the request by the learned senior counsel, such fine be paid within four months from today to the appellant, failing which the sentence in entirety, as awarded by the Trial Court and upheld by the Appellate Court, will stand restored, with the added modification that the entire fine of Rs.35,00,000/- (Rupees Thirty- Five Lakhs) will be payable to the appellant.

25. Parties are left to bear their own costs. I.A. No.99358/2024 (exemption from filing Official Translation) is allowed. I.A. No.234705/2024 (to file additional documents) is allowed; Annexure A-1 (Application/Tehrir) is taken on record.

……J. [SUDHANSHU DHULIA] ……..J. [AHSANUDDIN AMANULLAH] NEW DELHI APRIL 02, 2025