2023:DHC:6680

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

% **Reserved on: July 25, 2023**
Decided on: September 12, 2023

\+ **CRL.REV.P. 228/2017 &CRL.M.A. 10831/2019**

HANSRAJ BANSAL ..... Petitioner
Through: Mr. Bharat Gupta and Mr.Varun Tyagi, Advocates

V

STATE & ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R1
Mr. Prince Arora, Advocate for R-2

23

\+ **CRL.REV.P. 229/2017 &CRL.M.A. 10739/2019**

HANSRAJ BANSAL …..Petitioner
Through: Mr. Bharat Gupta and Mr.Varun Tyagi, Advocates

V

STATE &ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R-1
Mr. Prince Arora, Advocate for R-2

24

\+ **CRL.REV.P. 230/2017**

HANSRAJ BANSAL ..... Petitioner
Through: Mr. Bharat Gupta and Mr.Varun Tyagi, Advocates

V

STATE & ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R-1
Mr. Amit Kumar Singh and Mr. Rohit Rexwal, Advocates for R-2

25
+ CRL.REV.P. 233/2017 &CRL.M.A. 10742/2019

HANSRAJ BANSAL ..... Petitioner
Through: Mr. Bharat Gupta and Mr.Varun Tyagi, Advocates

V

STATE & ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R-1
Mr. Prince Arora, Advocate for R-2

26
+ CRL.REV.P. 234/2017

HANSRAJ BANSAL ..... Petitioner
Through: Mr. Bharat Gupta and Mr.Varun Tyagi, Advocates

V

STATE & ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R-1
Mr. Amit Kumar Singh and Mr. Rohit Rexwal, Advocates for R-2

27
+ CRL.REV.P. 235/2017

HANSRAJ BANSAL ..... Petitioner
Through: Mr. Bharat Gupta and

Mr.VarunTyagi, Advocates

V

STATE & ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R-1
Mr. Amit Kumar Singh and Mr. RohitRexwal, Advocates for R-2

28
+ CRL.REV.P. 236/2017 &CRL.M.A. 10741/2019

HANSRAJ BANSAL ..... Petitioner
Through: Mr. Bharat Gupta and Mr.Varun Tyagi, Advocates

V

STATE & ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R-1
Mr. Prince Arora, Advocate for R-2

29
+ CRL.REV.P. 237/2017

HANSRAJ BANSAL ..... Petitioner
Through: Mr. Bharat Gupta and Mr.Varun Tyagi, Advocates

V

STATE & ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R-1
Mr. Amit Kumar Singh and Mr. Rohit Rexwal, Advocates for R-2

30
+ CRL.REV.P. 238/2017 &CRL.M.A. 10740/2019

2023:DHC:6680

HANSRAJ BANSAL ..... Petitioner
Through: Mr. Bharat Gupta and Mr.Varun Tyagi, Advocates

V

STATE & ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R-1
Mr. Prince Arora, Advocate for R-2

31
+ CRL.REV.P. 239/2017 &CRL.M.A. 10743/2019

HANSRAJ BANSAL ..... Petitioner
Through: Mr. Bharat Gupta and Mr.Varun Tyagi, Advocates.

V

STATE & ANOTHER ..... Respondents
Through: Mr. Utkarsh, APP for State/R-1
Mr. Prince Arora, Advocate for R-2
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CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The petitioner as complainant filed criminal complaints under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as **"the Act"**) against the respondents no. 2 being accused, bearing no 269/13 (subject matter of Crl. Rev. Petition bearing no 228/2017) titled as **Hansraj Bansal V Abdul Ahad** on basis of

cheque bearing no.188868 dated 05.04.2009 amounting to Rs.11,71,600/- drawn on ICICI Bankwhich returned unpaid due to Payment Stopped by Drawer**;** 346/13 (subject matter of Crl. Rev. Petition bearing no 229/2017) titled as **Hansraj Bansal V Abdul Ahad** on basis of cheque bearing no 176236 dated 15.03.2009 amounting to Rs.11,10,000/- drawn on ICICI Bank which returned unpaid due to Payment Stopped by Drawer**;** 265/13 (subject matter of Crl. Rev. Petition bearing no 230/2017) titled as **Hansraj Bansal V Farooq @ Bablu** on basis of cheque bearing no.911692 dated 24.06.2012 amounting to Rs.5,00,000/- drawn on Punjab National Bank which returned unpaid due to Signature of the Drawer was not according to Mandate**;** 298/13 (subject matter of Crl. Rev. Petition bearing no 233/2017) titled as **Hansraj Bansal V Sarfaraz Ahmed** on basis of cheque bearing no 078864 dated 05.04.2009 amounting to Rs.3,32,500/- drawn on Standard Chartered Bank which returned unpaid due to Insufficiency of Funds**;** 725/13 (subject matter of Crl. Rev. Petition bearing no 234/2017) titled as **Hansraj Bansal V Arshad Ahmed**on basis ofcheque bearing no 791221 dated 10.06.2011amounting to Rs.2,00,000/- drawn on South Indian Bank

Ltd. which returned unpaid due to Want of sufficiency of Funds**;** 948/13 (subject matter of Crl. Rev. Petition bearing no 235/2017) titled as **Hansraj Bansal V Farooq @ Bablu**on basis ofcheque bearing no.911693 dated 28.06.2013 amounting to Rs.3,00,000/- drawn on Punjab National Bank which returned unpaid due to Signature of the Drawer Differs**;** 227/13 (subject matter of Crl. Rev. Petition bearing no 236/2017) titled as **Hansraj Bansal V Sarfaraz Ahmed** on basis of cheque bearing no.078860 dated 21.02.2009 amounting to Rs.9,60,000/- drawn on Standard Chartered Bank which returned unpaid due to Insufficiency of Funds**;**478/13 (subject matter of Crl. Rev. Petition bearing no 237/2017) titled as **Hansraj Bansal V Shis Pal Tomar** on basis of cheque bearing no.636617 dated 17.03.2009 amounting to Rs.2,50,000/- drawn on HDFC which returned unpaid due to Insufficiency of Funds**;** 464/13 (subject matter of Crl. Rev. Petition bearing no 238/2017) titled as **Hansraj Bansal V Abdul Ahad** on basis of cheque bearing no 188868 dated 05.04.2009 amounting to Rs.11,71,600/- drawn on ICICI Bank which returned unpaid due to Payment Stopped by Drawer and 401/13 (subject matter of Crl. Rev. Petition bearing no 239/2017) titled as

Hansraj Bansal V Sarfaraz Ahmed on basis of cheque bearing no.078861 dated 20.03.2009 amounting to Rs.14,90,000/- drawn on Standard Chartered Bank which returned unpaid due to Insufficient Fund. The petitioner also filed other complaints under section 138 of the Act which are bearing no.387/13 titled as **Hansraj Bansal V Sabir Ali;** 100/13 titled as **Hansraj Bansal V Komal Parshad;** 354/13 titled as **Hansraj Bansal V Sher Pal Nagar;** 585/13 titled as**Hansraj Bansal V Vinod Kumar;** 456/13 titled as **Hansraj Bansal V Salim @ Guddu** and bearing no.022/13 titled as **Hansraj Bansal V Manju Gupta**. The respondents no 2 and other accused did not pay the cheque amounts despite legal notice. Hence the petitioner filed present complaints. The petitioner led pre-summoning evidence in all complaints and thereafter cognizance was taken against the respondents in all complaints for offence punishable under section 138 of the Act. Notice under section 251 Cr. P.C. was stated to be given to the respondents no 2 to which they pleaded not guilty and filed applications under section 145(2) of the Act which were stated to be replied by the petitioner.

2. The petitioner in complaint bearing no 346/13 titled as **Hansraj Bansal V Abdul Ahad** vide proceedings dated 04.09.2013 conducted by the court of Sh. Sunil Gupta, MM, North East, Karkardooma Courts, Delhi was examined under section 165 of Indian Evidence Act, 1872. The petitioner in examination under section 165 of Indian Evidence Act, 1872 stated that he has filed around 15-20 complaints under section 138 of the Act against 12 persons. He had given money to the respondents Sarfaraz and Ahad for their chit funds activities and money was given to rest of the respondents due to friendly relations. Thereafter a show cause notice was also ordered to be issued to the petitioner to explain as to whether he is engaged in business of money lending and if he is so engaged, whether he has any statutory licence for doing money lending business. All the complaints pertaining to the petitioner as complainant were ordered to be placed on same day. The petitioner replied to the show cause notice wherein the petitioner stated that he is not engaged in business of money lending.

3. The court of Sh. Sunil Gupta, MM, North East, Karkardooma Courts , Delhi (hereinafter referred to as **"the trial court"**) vide order

dated 15.07.20I5 dismissed complaints bearing no 269/13 titled as **Hansraj Bansal V Abdul Ahad** , 464/13 titled as **Hansraj Bansal V Abdul Ahad**, 346/13 titled as **Hansraj Bansal V Abdud Ahad**, 478/13 titled as **Hansraj Bansal V Shish Pal Tomar**, 948/13 titled as **Hansraj Bansal V Faruq @ Babloo**,387/13 titled as **Hansraj Bansal V Sabir Ali**,265/13 titled as **Hansraj Bansal V Faruq @ Babloo**,100/13titled as **Hansraj Bansal V Komal Parsad** and 725/13 titled as **Hansraj Bansal V Arshad Ahmad.**

3.1 The petitioner did not pursue further remedy to impugn order dated 15.07.2015 in respect of complaint bearing no 387/13 titled as **Hansraj Bansal V Sabir Ali** and 100/13 titled as **Hansraj Bansal V Komal Parsad.**

3.2 The trial court vide order dated 20.08.20I5 dismissed three complaints bearing no 298/13**;** 227/13 and 401/13 all titled as **Hansraj Bansal V Sarfaraz Ahmed.**

3.3 The trial court did not dismiss complaint bearing no.354/13 titled as **Hansraj Bansal V Sher Pal Nagar;** 585/13 titled as **Hansraj Bansal V Vinod Kumar;** 456/13 titled as **Hansraj Bansal V Salim**

@ Guddu and bearing no.022/13 titled as **Hansraj Bansal V Manju Gupta**.

3.4 The trial court vide orders dated 15.07.2015 and 20.08.2015 dismissed complaints as mentioned hereinabove primarily on ground that the petitioner has violated the provisions of the Punjab Registration of Money Lenders Act, 1938 as he was engaged in business of money lending without licence.

3.4.1 The trial court in order dated 15.07.2015 in respect of three complaints bearing no. 269/13, 464/13 and 346/13 titled as **Hansraj Bansai V Abdul Ahad** observed that the petitioner in these complaints alleged that the respondent no.2 is engaged in the business of committee (chit funding) and has sought financial assistance from the petitioner against several pronotes and issued cheques on completion of the date of each pronote in discharge of the liability. It was further observed that amount was advanced by the petitioner on the basis of pronote and subsequently the cheques were issued by the respondent no 2 and issuance of the cheques doesn't mean that the amount in question was advanced by the petitioner on basis of a negotiable instrument rather was advanced on the basis of

promissory notes. Accordingly transaction is covered by the definition of loan as provided in the Punjab Registration of Money Lenders Act,1938.

3.4.2 The trial court in order dated 15.07.2015 in respect of three complaints bearing no.478/13 titled as **Hansraj Bansal V Shish Pal Tomar;** 948/13 titled as **Hansraj Bansal V Faruq @ Babloo** and 387/13 titled as **Hansraj Bansal V Sabir Ali** observed that the petitioner in these complaints alleged that amounts were advanced as financial assistance to the respondents no.2 for a definite period and after completion of the period, the respondents no.2 stated to have issued the cheques in discharge of liabilities. So it cannot be said that the amounts were advanced by the petitioner on the basis of a negotiable instrument but on oral assurance by the respondents no.2 to repay within the agreed time period. Accordingly amount advanced is covered within the term 'loan'.

3.4.3 The trial court in order dated 15.07.2015 in respect of three complaints bearing no.265/13 titled as **Hansraj Bansal V Faruq @ Babloo**,100/13 titled as **Hansraj Bansal V Komal Prasad** and 725/13 titled as **Hansraj Bansal V Arshad Ahmad** observed that the

petitioner alleged that the amount was given to the respondents no.2 against a promissory note and after completion of the time period and on demand of the petitioner complainant, the respondents no 2 issued cheques in discharge of their liability. Accordingly, transactions are covered by the definition of loan.

3.4.4 The trial court in order dated 20.08.2015 in respect of two complaints bearing no.227/13 and 401/13 both titled as **Hansraj Bansal V Sarfaraz Ahmed**observed that the petitioner alleged that the respondent no 2 is engaged in the business of committee (chit fund) and has sought financial assistance from the petitioner against pronotes and on completion of the date of each pronote, cheques were issued in discharge of the liability. Accordingly, transactions are covered by the definition of loan. The trial court in respect of complaint bearing no.298/13 titled as **Hansraj Bansal V Sarfaraz Ahmed** observed that the petitioner has allegedthat the respondent no 2 used to borrow money against pronotes followed by issuance of post-dated cheques upon completion of the period of pronotes. Accordingly, transaction is covered by the definition of loan.

3.5 The trial court in orders dated 15.07.2015 and 20.08.2015 referred section 3 of the Punjab Registration of Money Lenders Act, 1938 and definitions of loan as per section 2(8) and money lender as per section 2(9) which reads as under:-

> **3. Suits and applications by money-lenders barred, unless money-lender is registered and licensed. - Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the money-lender -**
>
> **(a) at the time of the institution of the suit or presentation of the application for execution; or**
>
> **(b) at the time of decreeing the suit or deciding the application for execution -**
>
> **(i) is registered; and**
> **(ii) holds a valid licence, in such form and manner as may be prescribed; or**
> **(iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit instituted, or the decree in respect of which the application for execution is presented; or**
> **(iv) if he is not already a registered and licensed money- lender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending: provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of licence pending before the Collector is finally disposed of.**

2(8) "Loan" means an advance whether secured or unsecured of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include -

(i) an advance in kind made by a landlord to his tenant for the purposes of husbandry;

Provided the market value of the return does not exceed the market value of the advance as estimated at the time of advance.

(ii) a deposit of money or other property in a Government Post Office Bank, or any other Bank, or with a company, or with a co-operative society or with any employer as security from his employees;

(iii) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment;

(iv) a loan advanced by or to the Central or any [State] Government or by or to any local body under the authority of the Central or any [State] Government;

(v) a loan advanced by a bank, a co-operative Society or a company whose accounts are subject to audit by a certificated auditor under the Indian Companies Act, 1913;

(vi) a loan advanced by a trader to a trader, in the regular course of business, in accordance with trade usage;

(vii) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note.

2(9) "Money-lender" means a person, or a firm carrying on the business of advancing loans as defined in this Act,

and shall include the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise, of such person or firm; provided that nothing in this definition shall apply to -

(a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased money-lender together with all his rights and liabilities; provided that such person only -

(i) winds up the estate of such money-lender;

(ii) realises outstanding loans;

(iii) does not renew any existing loan, nor advance any fresh loan;

(b) a *bona fide* assignment by a money-lender of a single loan to any one other than the wife or husband of such assignor, as the case may be, or any person, who is descended from a common grand-father of the assignor.

3.6 The trial court in orders dated 15.07.2015 and 20.08.2015 observed that amount advanced by the petitioner falls within the definition of 'loan' as per Punjab Registration of Money Lenders Act, 1938 and in the absence of any explanation by the petitioner, it can be safely said that the petitioner is a money lender within the meaning of Section 2(9) of the Punjab Registrations of Money Lenders Act, 1938. The trial court in support of orders dated 15.07.2015 and 20.08.2015 has referred two decisions delivered by the Bombay High Court in **Anil V Purshottam,** Criminal

Application No. 630 of 2009 in Criminal Appeal (stamp) No. 139 of 2009 decided on dated 21.11.2009 and **Tinki Nagpur V Unknown,** Criminal Appeal No. 467/2009 decided on 12.01.2010. The Bombay High Court in **Anil V Purshottam** observed as under:-

> **Here, I may refer to the provisions of the Bombay Money-Lenders Act, 1946. Section 5 of the said Act lays down that no money lender shall carry on business of money lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence. It is not the case of present applicant-complainant that he has any money lending licence. Section 10 of the Act lays down that no court shall pass a decree in favour of a money-lender in any suit to which said Act applies unless the court is satisfied that at the time when the loan or any part thereof, to which the suit relates was advanced, the money-lender held a valid licence, and if the court is satisfied that the money-lender did not hold a valid licence, it shall dismiss the suit. In other words, carrying on money lending business without licence debars a person from doing money lending and recovering the amount through court. As per explanation to Section 138 of the Negotiable Instruments Act "debt or other liability" means a legally enforceable debt or other liability. So, a loan advanced by a money lender who is doing business of money lending without licence is not a debt or other liability and provisions of Section 138 of the Act will not apply to such transaction. In the light of above, it cannot be said that in the present case, that the cheque issued by the Respondent in favour of the applicant was for the liability enforceable in law.**

The Bombay High Court in **Tinki Nagpur V Unknown** observed as under:-

The words "No court" and "in any suit" used in the Section are wider in scope to embrace any suit or proceeding initiated by a money lender who is required to hold and prove valid license for money lending for the relevant period of the loan transaction or transactions. The trial Court was, therefore, entitled to insist upon the complainant for production of valid license for money lending and also to infer in view of Section 114 (g) of the Evidence Act that the document withheld was unfavourable to the complainant who withheld it. Thus, the legal position cannot be disputed that Courts are bound to dismiss the suit by money lender for recovery of loans when such money lender was found carrying on business of money lending on the date or dates of the transaction without having valid money lending license.

3.6.1 The trial court ultimately opined that the petitioner has violated the provisions of the Punjab Registration of Money Lenders Act, 1938 as he is engaged in the business of money-lending without requisite license and accordingly dismissed the complaints as mentioned hereinabove.

4.The petitioner filed a Criminal Revision Petition bearing no 825/2015 titled as **Hansraj Bansal V State & others**to impugn orders dated 15.07.2015 and 20.08.2015 which was allowed to be dismissed as withdrawn with liberty to file separate cases within one month vide order dated 07.03.2017 passed by Coordinate Bench of this Court.

5. The petitioner challenged orders dated 15.07.2015 and 20.08.2015 on grounds that orders dated 15.7.2015 and 20.08.2015 are bad in eyes of law and suffer from legal infirmity. The trial court has erred in jurisdiction to pass the extra-judicial dismissal orders without explaining the statute properly. A money lender requires to be permanently engaged in the said business with repetition and continuity. The trial court has referred to the judgments which exclusively deal with the civil suits for recovery by money lenders and none of the said judgements exclusively applicable to the criminal complaints under the provisions of the Act. The Punjab Registration of Money Lenders Act,1938 is applicable to suits only and not to complaints under the Act. The trial court has erred in passing the order of dismissal whereas the trial court itself has summoned the respondents after being satisfied about the legality of the complaints. The orders dated 15.07.2015 and 20.08.2015 caused miscarriage ofjustice and if the trial court was of the view that the complaintsare hit under any provisions of the law then the trial court should have dismissed the complaints and acquitted the respondents no.2 after conclusion of trial.

6. The counsel for the petitioner advanced oral arguments and also submitted written arguments.

6.1 The counsel for the petitioner argued that the trial court should not have dismissed the complaints at a pre-trial stage without evidence having been led by the petitioner and cited decision of the Supreme Court **In Re: Expeditious Trial of Cases Under Section 138 of N.I. Act, 1881,** AIR2021SC1957 wherein it was held that section 258 Cr.P.C. is not applicable to a summons case instituted on a complaint and as such section 258 Cr. P.C. cannot be applied in respect of the complaints filed under Section 138 of the Act. The Trial Court is not conferred with inherent power either to review or recall the order of issuance of process. The counsel for the petitioner also referred **Court on its Own Motion V State,** Neutral Citation No: 2022/DHC/001932 wherein it was held that the court of a Magistrate does not have the power to discharge the accused upon his appearance in court in a summons trial case based upon a complaint in general, and particularly in a case under section 138 of the Act, once cognizance has already been taken and process issued under Section 204 Cr.P.C. The counsel for the petitioner argued that the

trial court should not have abruptly dismissed the complaints filed by the petitioner after taking cognizance and issuing process to the respondents no 2 till the completion of trial.

6.2 The counsel for the petitioner raised issue of applicability of provisions of the Punjab Registration of Money Lenders Act, 1938 to the complaints filed under the Act and whether this issue can be decided without evidence being led to show that the petitioner was a money lender. He cited **Samarendra Nath Das V Supriyo Maitra,** 2005 SCC OnLine Cal 628 and **Jupiter Brokerage Services Ltd. V Ektara Exports Pvt. Ltd.,** 2015 SCC OnLine Cal 10514decided by the Calcutta High Court, **Dhanjit Singh Nanda V State & another,** 2009 SCC OnLine Del 261 decided by this court, **Ravinder Paul V Ashwani Kumar,** 2020 SCC OnLine P&H 4606 decided by Punjab & Haryana High Court **Satyanarayana V M/s Sandeep Enterprises,** 2004 SCC 8 OnLine Kar 427 decided by Karnataka High Court**.** The counsel argued that the provisions of the Punjab Registration of Money Lenders Act, 1938 are not a bar for a complaint case filed under the Act.

6.3 The counsel for the petitioners also argued that present revision petitions are maintainable in place of appeal and present revision petitions can be filed directly before this court.

7. The counsel for the respondents advanced oral arguments and also submitted written arguments.

7.1 The counsel argued that the present revision petitions are not maintainable as orders dated 15.07.2015 and 20.08.2015 were in the natureof dismissal of complaint as well as acquittal of the respondents no 2 and the petitioner was required to file appeal.The present revisions are also not maintainable without invoking jurisdiction of the Sessions Court. The complaints were dismissed during the trial and queries were put to the petitioner in examination under section 165 of the Indian Evidence Act, 1872 as he had filed multiple complaints against several persons on the basis of pronote and the petitioner also admitted that he had no licence of money lending though he had filed multiple complaints against the various persons i.e. the respondents. He further argued that if money lending is prohibited without license then it cannot be legally enforceable

under the Act. The counsel for the respondents argued that the present petitions are liable to be dismissed.

8. It is reflecting that the petitioner being complainant filed various complaints under section 138 of the Act against the respondents no.2 as detailed herein above primarily on allegations that he had given money to the respondents no 2. The petitioner is not a licence holder of money lending. The petitioner led pre-summoning evidence and thereafter cognizance for offence punishable under section 138 of the Act was taken against the respondents no.2 being accused. The respondents were ordered to be summoned for offence under section 138 of the Act. In all complaints as detailed herein above, notice under section 251 Cr.P.C. was given to the respondents no.2 to which they pleaded not guilty and claimed trial. The trial court before recording evidence post notice under section 251 Cr.P.C., examined the petitioner under section 165 of Indian Evidence Act, 1872in complaint bearing no 346/13 titled as **Hansraj Bansal V Abdul Ahad** vide proceedings dated 04.09.2013 wherein the petitioner stated that he has filed around 15-20 complaints under section 138 of the Act against 12 persons. A show cause notice was also issued to

the petitioner to explain as to whether he is engaged in business of money lending and is having any statutory licence for doing money lending business. The petitioner in response to show cause notice replied that he is not engaging in business of money lending. The trial court vide order dated 15.07.2015 dismissed nine complaints and vide order dated 20.08.2015 dismissed three complaints as detailed herein above primarily on ground that the petitioner is not having valid money lending licence as per the Punjab Registration of Money Lenders Act, 1938.

9. The Punjab Registration of Money Lenders Act, 1938 was enacted to register money-lenders and to regulate their business. Section 3 bars suits and applications by money-lenders unless money lender is registered and licensed. It provides that a suit by a money lender for the recovery of a loan or an application by a money lender for the execution of a decree relating to a loan shall be dismissed unless the money-lender is registered and holds a valid licence or a certificate under section 11. Section 4 deals with registration of money lenders. Section 2(8) describe loan which means an advance whether secured or unsecured of money or in kind at interest and includes any

transaction which is in substance a loan. However loan does not include in its ambit an advance made on the basis of a negotiable instrument as defined in the Act other than a promissory note. Section 2(9) defines money lender which means a person or a firm carrying on the business of advancing loans. The Supreme Court in **Gajanan & others V Seth Brindaban,** 1971 SCR (1) 657 observed that the registration of a money lender does not afford to debtors any additional protection not available under the other provisions of the Act. An unregistered money lender can be punished only for the collective act of carrying on the business of money lending and not for every loan advanced by him without a registration certificate.The Punjab & Haryana High Court in **Balwant Singh V Mukhtiar Singh,** RSA-2844-2015 (O&M) decided on 2.12.2022 held that the plaintiff was regularly and consistently lending money on interest and was not merely a casual or occasional lender. The plaintiff though running the business of money lending neither got registered under Section 4 of the 1938 Act nor even possesses any license under the said Act. Accordingly, the suit for recovery filed on basis of pronote and a receipt itself was liable to be dismissed being not maintainable.

10. The Negotiable Instruments Act, 1881 was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 has inserted new Chapter XVII comprising sections 138 to 142 with effect from 01.04.1989 in the Act. Section 138 of the Act provides the penalties in case of dishonour of cheques due to insufficiency of funds etc. in the account of the drawer of the cheque. However sections 138 to 142 of the Act were found deficient in dealing with dishonour of cheques. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 amended sections 138, 141 and 142 and inserted new sections 143 to 147 in the Act aimed at speedy disposal of cases relating to dishonour of cheque through their summary trial as well as making them compoundable. The Supreme Court in **Electronics Trade & Technology Development Corporation Ltd., Secunderabad V Indian Technologists & Engineers (Electronics) (P) Ltd. and another,** (1996) 2 SCC 739 observed that the object of bringing section 138 on statute appears to inculcate the faith in the efficacy of banking operations and credibility in transacting business

on negotiable instruments and section 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a book and induce the payee or holder in due course to act upon it. The Supreme Court again in **Goa Plast (P) Ltd. V Chico Ursula D'Souza,** (2004) 2 SCC 235 while dealing with the objects and ingredients of Sections 138 and 139 of the Act observed as under:-

> **The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.**

10.1 The Supreme Court in **Indian Bank Association and others V Union of India (UOI) and another,** Writ Petition (Civil) No. 18 of

2013 decided on 21.04.2014 also observed that sections 138 to 142 of the Act were found to be deficient in dealing with the dishonoured cheques. The legislature inserted new Sections 143 to 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and earlier to this the Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 whereby a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque to encourage the culture of use of cheques and enhancing the credibility of the instrument.

10.2 Section 138 of the Act reads as under:-

> **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 provisions of this Act, be punished with imprisonment for a term which may be extended 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—

(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;

(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, [20] [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(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.

10.2.1 The Supreme Court in **Kusum Ingots & Alloys Ltd. V Pennar Peterson Securities Ltd. & others,** (2000) 2 SCC 745 laid down the following ingredients for taking cognizance under section 138 of the Act:-

(i) A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability

(ii) That cheque has been presented to the bank within a period of six months from the date on which it is drawn of within the period of its validity, whichever is earlier

(iii) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank

(iv) The payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid

(v) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course within 15 days of the receipt of the said notice

(vi) The complaint is to be filed within one month from the date of expiry of the 15 days from the receipt of the notice.

11. Issues which need judicial consideration in context of present petitions is that whether a person can be debarred from filing and prosecuting complaint under section 138 of the Act if he is doing business of money lending without holding a valid licence and whether there is apparent conflict between section 3 of Punjab Registration of Money Lenders Act, 1938 and section 138 of the Act.

11.1 Every statute is enacted for specific purpose and intent and should be read as a whole. The legislature enacts statutes and legislation and takes appropriate precautions at time of drafting and enacting different legal provisions but sometimes conflicts appears in

interpretation of different statutory provisions. In this eventuality Doctrine of Harmonious Construction needs to be adopted. The legal provisions contained in one particular statute cannot be read to defeat legal provisions contained in another statute and both legal provisions contained in different statute should be given maximum effect in their operation and applicability. The Punjab Registration of Money Lenders Act, 1938 and Chapter XVII of the Negotiable Instruments Act, 1881 which was incorporated by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 for providing penalties in case of dishonour of cheques with an objective to encourage the culture of use of cheques and enhancing the credibility of the instrument. Both statutory provisions were enacted with different objectives and intent and are operational in independent and separate legal spheres. There is no apparent conflict between section 3 of the Punjab Registration of Money Lenders Act, 1938 which apparently bars civil remedy for a money lender who is not having valid licence or certificate for doing business of money lending and Chapter XVII of the Act which provides criminal

remedies and penalties in case of dishonor of a cheque due to reasons as mentioned in section 138 of the Act.

12. The legal issue that if a complainant who is not having valid licence or certificate for money lending can institute and prosecute complaint under section 138 of the Actcame for consideration before different High Courts besides other related issues.

12.1 The Delhi Court in **Dhanjit Singh Nanda V State & Another,** Crl.M.C.209/2009 decided on 09.02.2009 rejected the argument that the complainant is debarred from recovering loan amount as he is not a registered money lender. It was observed as under:-

> **The next argument addressed by the petitioner that the respondent was debarred from recovering the loan amount being not a registered money lender does not lie in the mouth of the petitioner for two reasons: The petitioner took the loan from the respondent voluntarily and even executed an agreement in this regard whereby he agreed to repay the same after ninety days with interest. At the same time he also issued the cheque in question for the repayment of the loan but became dishonest when the cheque was presented for encashment. The 2 nd reason to reject the argument of the petitioner is that the proceedings under Section 138 of NI Act are not recovery proceeding but are proceedings to punish a person who after issuing a cheque fails to honour the same and also commits a default in paying the said amount on receipt of the notice.**

This Court in **Virender Singh V Deepak Bhatia,** Crl.L.P. 491/2011 decided on 08.04.2011 which is also relied on by the counsel for the petitioner observed that the instant cases relate to an advance made by the petitioner to the respondents on the basis of the cheques which admittedly are negotiable instrument and as such bar of section 3 of the Act of 1938 is not attracted to a loan given on the basis of a negotiable instrument like a cheque. A Coordinate Bench of this court in **Kajal V Vikas Marwah,** Crl.A. 870/2013 decided on 27.03.2014 considered issue whether if the complainant is not holder of money lending licence can he be debarred from filing complaint under section 138 of the Act. It was observed as under:-

> **In my view, even if the appellant/complainant was engaged in lending money, that would not debar her from filing a complaint under Section 138 of the Negotiable Instruments Act, if a cheque issued to her towards repayment of the loan advanced by her is dishonoured by the bank for want of funds and the drawer of the cheques fails to make payment within the prescribed time, after receipt of legal notice from the lender. Section 3 of the Punjab Registration of Money Lenders' Act, 1938, which applies to Delhi, to the extent it is relevant provides that notwithstanding anything contained in any other enactment for the time being in force, a suit by a money lender for the recovery of a loan shall, after the commencement of the Act, be dismissed unless the money lender at the time of institution of the suit is registered and holds a valid license or holds a certificate from the Commissioner granted under Section 11 of the**

> **Act, specifying the loan in respect of which the suit is instituted or if he is not already a registered or licensed money lender, he satisfies the court that he has applied for such registration or license but the application is pending. The aforesaid provision does not debar a money lender from instituting a complaint under Section 138 of the Negotiable Instruments Act, 1881, which is a remedy enforceable before a criminal court, and totally independent of a civil suit. The criminal liability is incurred only in case a cheque is issued in discharge of a debt or other liability, the said cheque is dishonoured for want of funds and the borrower fails to make payment of the amount of the cheque even after receipt of a notice from the lender.**

This court in **Guddo Devi @ Guddi V Bhupender Kumar,** Crl.Rev.P. 1246/2019 decided on 11.02.2020 observed thatthere is no material to conclude that the respondent was carrying on the business of advancing loans. Merely because the respondent had lent money to three or four persons, did not lead to the inference that the respondent had been carrying out the activity of money lending as a business.

12.2 The Punjab & Haryana High Court in **Ravinder Paul V Ashwani Kumar,** CRA-S-2319-SB-2012 (O&M) decided on 04.02.2020 observed as under:-

> **The trial Court had dismissed the complaint mainly for the reason that the complainant was a money lender, lending money without licence. The Magistrate had not gone into the merits of the case as to whether the necessary**

ingredients of Section 138 of the Act were established or not. Therefore, the impugned judgment dismissing the complaint for the reason of complainant having been found to be a professional money lender practicing money lending without licence is not sustainable.

12.3 The High Court of Judicature at Calcutta in **Samarendra Nath Das V Supriyo Maitra,** C.R.R No. 175/05 and application being C.R. A.N. No. 598/05decided on 16.12.2005 observed that alleged violation of provisions of Money Lenders Act does not bar continuation of proceedings under Section 138 of the Act. It was held as under:-

11. The submissions made by Mr. Ukilis not at all applicable in the present matter. Had it been a money suit instituted by the money lender for the recovery of the loan advanced by him together with interest and for accounting all these submissions would have been relevant. In a criminal proceeding u/s 138 of the NI Act these are not relevant at all. In the instant matter a Magistrate is to consider whether the offence as alleged was committed or not and whether evidence is sufficient to prove complainant's case. Legality or illegality of the contract and existence and non-existence of money lending business by the complainant is not a ground to throw the complainant's case out of Court. If it was a money suit for recovery of the money the accused petitioner would have been definitely in a better position and was entitled to the advantage of violation of Sections 23 and 24 of the Contract Act as well as non-existence of money lending business of the money lender. The accused petitioner has only remedy in the trial to rebut the presumption u/s 139 of the NI Act, and to establish his case by leading evidence when he would be asked to enter into defence after his examination u/s 313 of

the Code would be over. When all the prima facie materials of offence u/s 138 of the NI Act is present sufficient to issue process this, Court would not interfere into the order of the learned Magistrate and would not quash the criminal proceeding or set aside the order of the learned Magistrate. The accused petitioner has remedy only to lead evidence by examining witnesses and producing documents to prove that there was no transaction with complainant or that he did not issue any cheque in favour of the complainant and that there was no existing debt or liability at the time of his entering into defence and leading his evidence.

12. The point for consideration before the learned Magistrate would be whether act or omission of the accused petitioner completed offence u/s 138 of the NI Act. It would not be a matter for consideration before the learned Magistrate whether the complainant had money lending licence or not. This is not a suit or proceeding under Money Lenders Act and accordingly provisions of Money Lenders Act are not at all relevant for consideration in the trial before the learned Magistrate.

The High Court of Judicature at Calcutta in **Jupiter Brokerage Services Ltd. V Ektara Exports Pvt. Ltd. & others,** C.R.A. No936 of 2013 (Appellate Side) decided on 13.10.2015, the court considered defence of the respondents/accused that the transactions in question were simple lending of money for which the appellant/complainant had no valid licence and hence the provisions of Section 138 or 139 of the Act are not attracted in the case and this argument was accepted by the trial court and the trial court dismissed the appellant/complainant's case on such ground only.It

was observed that money lending without licence is not totally barred or prohibited by the Bengal Money-Lender's Act, 1940 which is basically a Regulatory Act and regulates the business of money lending. It was held as under:-

> **There cannot be any dispute to the fact that the presumptions both in Section 118 and 139 of the N.I. Act are rebuttable presumptions. In the present case the only point for rebuttable of such presumptions for the respondents/accused is that the transactions in question are illegal transactions as the appellant/complainant has no money-lending licence. As held earlier, lending money without having a money-lending licence itself is not prohibited under the Bengal Money-Lender's Act, 1940. So, the presumptions in favour of the appellant/complainant stand unrebutted. The respondents/accused cannot, therefore, escape from the liability under Section 138 of the N.I. Act, especially when there is no denial of the fact that the respondents/accused issued the cheques in question which were dishonoured due to insufficient fund in the account of the respondents/accused.**

12.4 A Division Bench of Karnataka High Court in **V. Satyanarayana V Sandeep Enterprises,** 2005 CriLJ 12 while interpreting money lender also observed as under:-

> **Even otherwise, if assumed that the cheques were issued by the petitioner/accused in the course of money lending - business, that itself does not attract the provisions contained in Karnataka Money Lenders Act. This is because, under said Act, money lender means "a person, who carried on the business of money lending" and to say that one is a money lender, he or she must carry on**

> **business in money lending in the State and, to record an activity as business, there must be a course of dealings carried with a profit motive. In other words, money lending must be carried on as profession. If the money lending was not with profit motive or, not carried on as a profession, he or she does not become a money lender under the Karnataka Money Lenders Act…….. So, a stray instance of lending money does not show carrying on the business of money lending as profession or with profit motive.**

12.5 It is acceptable proposition of law that section 3 of Punjab Registration of Money Lenders Act, 1938 does not limit operation of section 138 of the Act and both are independent and mutually exclusive to each other. If a person advances a loan even without having a valid money lending licence or certificate he can institute and prosecute complaint under section 138 of the Act on basis of cheques and he has to satisfy only the mandatory requirements of section 138 of the Act.

13. The trial court in complaint bearing no 346/13 titled as **Hansraj Bansal V Abdul Ahad** after cognizance being taken under section 138 of the Act and notice under section 251 Cr.P.C. was given for offence under section 138 of the Act, vide proceedings dated 04.09.2013 abruptly examined the petitioner under section 165 of Indian Evidence Act, 1872 wherein the petitioner stated that he has filed around 15-20 complaints under section 138 of the Act against

12 persons and he had given money to the respondents Sarfaraz and Ahad for their chit fund activities and money was given to rest of the respondents due to friendly relations. The trial court preferred to issue a show cause notice to the petitioner during trial which is absolutely unknown in summon trial as per Chapter XX of the Code of Criminal Procedure, 1973 to explain as to whether he is engaged in business of money lending and if he is so engaged, whether he has any statutory licence for doing money lending business and further all the complaints pertaining to the petitioner as complainant were ordered to be placed on same day. The petitioner replied show cause notice wherein the petitioner stated that he is not engaged in business of money lending. Thereafter the trial court in orders dated 15.07.2015 and 20.08.2015 on fact that the petitioner advanced loan to many persons assumed without any legal and factual basis that the petitioner is a money lender and loans advanced by the petitioner to the respondents fall with in definition of loan as per Punjab Registration of Money Lenders Act, 1938.The information given by the petitioner in response to queries put to him under section 165 of the Indian Evidence Act, 1972 was confined to only that he had given

money to the respondents which did not reflect in any manner his activities as professional manner. The petitioner in reply to show cause notice categorically stated that he is not engaged in business of money lending. The trial court should not have dismissed the nine complaints vide order dated 15.07.2015 and three complaints vide order dated 20.08.2015 and these orders are outcome of complete non-application of judicial mind by the trial court and in total contravention of procedure laid down in Chapter XX of the Code of Criminal Procedure, 1973. The orders dated 15.07.2015 and 20.08.2015 are illogical, abrupt and completely illegal and cannot be sustained in view of the accepted proposition of law as discussed hereinabove. The trial court should have proceeded with trial of complaints under section 138 of the Act. The trial court should not have dismissed the complaints under section 138 of the Act filed by the petitioners merely on basis of statement of the petitioners recorded under section 165 of the Indian Evidence Act, 1972 and reply given by the petitioner in response to show cause notice. The trial court reliance on two decisions delivered by the Bombay High Court was misplaced under given facts and circumstances of present

petitions. There is legal force in arguments advanced by the counsel for the petitioner that the provisions of the Punjab Registration of Money Lenders Act, 1938 are not applicable to the complaints filed under the Act and the complaints can be decided without evidence being led to show that petitioner was a Money Lender. The arguments advanced by the counsel for the respondents on this issue are without any legal basis and are legally unsustainable.

13.1 The trial court dismissed the complaints at pre-trial stage without giving an opportunity to the petitionerto lead evidence. The Supreme Court in **Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881,** AIR2021SC1957 as argued and cited by the counsel for the petitioner has held that Section 258 of Cr. P.C. is not applicable to a summons case instituted on a complaint and as such section 258 Cr. P.C does not have any role to play in respect of the complaints filed under Section 138 of the Act. The trial court is not vested with inherent power either to review or recall the order of issuance of process. It was also observed by this court in **Court on its Own Motion V State,** Neutral Citation No: 2022/DHC/001932 that the court of a magistrate does not have the power to discharge

the accused upon his appearance in court in a summons trial case based upon a complaint including complaints under section 138 of the Act once cognizance has already been taken and process is ordered to be issued under section 204 Cr.P.C. Accordingly, trial court has adopted a wrong procedure alien to chapter XX of the Code of Criminal Procedure Code, 1973 in dismissing complaints merely on basis of examination of the petitioner under section 165 of the Indian Evidence Act, 1872 and reply to show cause notice and without resorting to trial as per the law.

13.2 The counsel for the respondents argued that present revision petitions are not maintainable as the orders dated 15.07.2015 and 20.08.2015 were in the nature of dismissal of complaint as well as acquittal of the accused i.e. the respondents no 2.

The counsel for the petitioner to the contrary argued that the trial court has dismissed the complaints abruptly without concluding the trial which does not amount to acquittal. This court in revisional jurisdiction can exercise its power in cases where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised

arbitrarily. The legality, propriety or correctness of an order passed by the Metropolitan Magistrate is the very foundation of exercise of revisional jurisdiction. The counsel for the petitioner cited **Amit Kapoor V Ramesh Chander, (2012) 9 SCC 460** and other decisions delivered by the Superior Court.

13.2.1 The trial court vide 15.07.2015 ordered dismissed nine complaints as detailed hereinabove.The trial court in order dated 20.08.2015 while dismissing the three complaints ordered for acquittal for the accused i.e. the respondents no 2 of complaints bearing no 227/13,298/13 & 401/13 titled as **Hansraj Bansal V Sarfaraz Ahmad.** The trial court has not dismissed the complaints and acquitted the respondent no 2 after conclusion of trial and on basis of evidence to be led by the contesting parties but on wrong assumption of legal principles and without resorting to settled legal principles which resulted into miscarriage of justice to the petitioner. Hence, the present revision petitions are maintainable without resorting to filing appeals . The arguments advanced by the counsel for the respondents are without legal force.

13.3 The counsel for the respondents argued that the petitioner by not invoking the appropriate jurisdiction before the sessions court and without giving sound reasonscannot file present revision petition before this court directly and as such present petitions deserve to be dismissed being not maintainable. The counsel for the petitioner after referring **CBI V State of Gujarat,** (2007) 6 SCC 156 argued that the revision petition against an order passed by Magistrate can be filed directly before the High Court. Section 397 of the Code of Criminal Procedure, 1973 gives concurrent jurisdiction to both High Court and Sessions Court and such present revision petitions can be filed directly to the High Court over the Sessions Court. The present petitions are as such maintainable before this court.

14. The arguments advanced and case law cited by respective counsel for the petitioner and the respondents no 2 are perused and appropriately appreciated in right perspective. The present petitions are allowed and the orders dated 15.07.2015 and 20.08.2015 are set aside. The complaints bearing no 269/13 titled as **Hansraj Bansal V Abdul Ahad;** 346/13 titled as **Hansraj Bansal V Abdul Ahad;** 265/13 titled as **Hansraj Bansal V Farooq @ Bablu;** 298/13 titled

as **Hansraj Bansal V Sarfaraz Ahmed;** 725/13 titled as **Hansraj Bansal V Arshad Ahmed;** 948/13 titled as **Hansraj Bansal V Farooq @ Bablu;** 227/13 titled as **Hansraj Bansal V Sarfaraz Ahmed;** 478/13 titled as **Hansraj Bansal V Shish Pal Tomar;** 464/13 titled as **Hansraj Bansal V Abdul Ahad** and 401/13 titled as **Hansraj Bansal V Sarfaraz Ahmed** filed by the petitioners are remanded back to concerned trial court for expeditious trial in accordance with law. The petitioner and the respondents no 2 of above mentioned complaints are directed to appear before concerned court of Chief Metropolitan Magistrate for further assignment to competent court of Metropolitan Magistrate on 23.09.2023 at 2:30 pm.

DR. SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 12, 2023
N/SD