

\$~7, \$~8, \$~9, \$~10, \$~11

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

% Judgment delivered on: 26th March, 2012

+ CRL.L.P. 228/2011

PAWAN SINGHAL

... Petitioner

Through: Mr. Ajay Mehrotra and Ms. Nancy,
Adv.

Versus

GAURI SHANKAR DEORA & ANR

..... Respondents

Through: Mr. D.K. Mishra, Adv.

AND

+ CRL.L.P. 229/2011

PAWAN SINGHAL

..... Petitioner

Through: Mr. Ajay Mehrotra and Ms. Nancy,
Adv.

versus

GAURI SHANKAR DEORA & ANR

..... Respondents

Through: Mr. D.K. Mishra, Adv.

AND

+ CRL.L.P. 230/2011

PAWAN SINGHAL

..... Petitioner

Through: Mr. Ajay Mehrotra and Ms. Nancy,
Adv.

versus

GAURI SHANKAR DEORA & ANR

..... Respondents

Through: Mr. D.K. Mishra, Adv.

AND
+ CRL.L.P. 231/2011

PAWAN SINGHAL Petitioner
Through: Mr. Ajay Mehrotra and Ms. Nancy,
Adv.

versus

GAURI SHANKAR DEORA & ANR Respondents
Through: Mr. D.K. Mishra, Adv.

AND
+ CRL.L.P. 232/2011

PAWAN SINGHAL Petitioner
Through: Mr. Ajay Mehrotra and Ms. Nancy,
Adv.

versus

GAURI SHANKAR DEORA & ANR Respondents
Through: Mr. D.K. Mishra, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Since the facts of all the petitions are similar, therefore I have decided to dispose of all the petitions by a common judgment.
2. The brief facts of the case are that petitioner filed a complaint against the respondent / accused for the offences punishable under Section 460/420 Indian Penal Code, 1860 and Section 138 NI Act,

1881 (herein after referred to as “the Act”) on the allegations that the petitioner / complainant was dealing in Computer components and is the sole proprietor of M/s Sinco Technosys and have a show room at Nehru Place.

3. The respondent / accused was the tenant of the complainant and was in the same trade. He was in need of money and the petitioner / complainant advanced friendly loan to him. After some time, respondent / accused also asked the complainant for the same favour to his friend namely Ravinder on his personal guarantee and took money on his name.

4. In order to discharge his liability and his friend, respondent / accused had issued fourteen cheques in total. The details of the four cheques are as under:

<u>Cheque no.</u>	<u>Dated</u>	<u>Amount</u>
833203	02.08.2004	Rs.25,000/-
833204	02.08.2004	Rs.25,000/-
833205	02.08.2004	Rs.25,000/-
833206	02.08.2004	Rs.25,000/-

5. All the cheques including four mentioned above were drawn on Punjab National Bank, Krishna Nagar, Delhi Branch with an assurance that the said cheques were given by him and Ravinder, would be honoured on presentation.

6. The said cheques were presented, but same returned dishonoured on 05.08.2004 with remarks “signatures differ” or “funds insufficient” vide memo dated 03.08.2004.

7. On enquiry from the Bank, it was revealed that the cheques in question belongs to the account of respondent / accused and he had issued the cheque with malafide and fraudulent intentions. On inspection of cheques, it also revealed that the signatures on some cheques were in the name of Ravinder, but put by the respondent / accused.

8. Petitioner / complainant accordingly sent legal notice dated 28.08.2004 to respondent / accused. Same was replied and respondent / accused denied his liability, leading up to the making of complaint with a view to prosecute and punish the respondent / accused for his having committed offences punishable under Section 406/420 Indian Penal Code, 1860 and Section 138 of the Act.

9. Vide order dated 16.07.2005, a notice of accusation under Section 251 of Cr.P.C. 1973 was framed against the respondent / accused whereby, he was charged with the commission of offence punishable under Section 138 of the Act only in respect of all the cheques. He did not plead guilty and claimed trial.

10. The respondent / accused denied having issued cheques and also denied that the cheques bear his signatures. At the time of recording of plea of respondent / accused, he had admitted having received the legal notice.

11. I here make it clear that on some cheques, signatures of respondent / accused were there, however he denied for any enforceable debt against him and issued in favour of the petitioner.

12. The petitioner / complainant examined himself as CW1 and during his examination, he tendered his affidavit along with documents

Ex.CW1/A1 to CW1/H.

13. The respondent / accused also examined under Section 313 Cr.P.C., wherein it is stated that all the cheques were issued by one Ravinder Gupta in favour of petitioner / complainant, although the account bearing no. 21113 whereupon the cheques were drawn, is in his name.

14. He further stated that witnesses have falsely deposed against him. In his defence, he examined three defence witnesses. During defence evidence, documents were also filed on behalf of respondent / accused.

15. Ld. Counsel appearing on behalf of the petitioner / complainant while relying upon the case of Rangappa vs. Sri Mohan, 2010 (5) SCALE 340, that the testimony of CW1 Mr. Pawan Singhal, petitioner / complainant and the documents tendered by him during his examination in chief, submitted that to discharge his liability towards the petitioner / complainant, the respondent / accused had issued cheques mentioned above in favour of the petitioner. He further submits that the respondent / accused has admitted that account bearing no. 21113 whereupon the cheques were drawn is in his name. Therefore in view of Section 139 of the Act, there is a presumption against him.

16. It is further submitted that the signatures in the name of Mr. Ravinder Gupta were put up by the respondent / accused himself intentionally and with malafide intention. Therefore from the material on record, the guilt of respondent / accused has been proved.

17. On the other hand, ld. Counsel for the respondent / accused

submitted the petitioner has failed to prove the accusation against the respondent / accused and therefore, he has been acquitted by the trial court.

18. It is further submitted that respondent / accused did not owe any debt or other liability to the petitioner / complainant, therefore the respondent / accused could not be held guilty for the commission of offence charged against him. The cheques were not drawn by him, instated the same were drawn by one Mr. Ravinder Gupta.

19. It is also submitted that as per the evidence led by both sides, it has been established that at the relevant time, the petitioner / complainant was not having financial capacity to give loan to the respondent / accused and therefore, the version of petitioner / complainant has not been believable.

20. On the cross-examination of CW1 petitioner / complainant conducted on 05.05.2008 and the documents Mark A tendered on the same day and Ex.PW1/D1 that from the testimony of CW1 and the document Mark A it has been proved that in the Month of May – June, 2004, the petitioner / complainant could not have lent any money to respondent / accused, because as per the contents of notice Mark A, respondent / accused was unable to discharge his earlier liabilities.

21. It is argued before Id. Trial Court, on behalf of respondent / accused that from the Income Tax Return produced by the petitioner / complainant, it has been established that petitioner / complainant did not give any loan to respondent / accused. Therefore, he rebutted the presumption under Section 118 (a) and 139 of the Act, therefore, no case is made out against the respondent / accused.

22. Ld. Trial Judge observed that complaint was originally made under Section 420/406 Indian Penal Code, 1860 read with Section 138 of NI Act, but by order dated 10.09.2004, only cognizance of offence punishable under Section 138 NI Act was taken.

23. Ld. Trial Judge further observed that from the reading of Section 138 of the Act, it can be discerned that to render a person liable for the commission of offence punishable under Section 138, it is necessary that the cheque should be 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.

24. Ld. Trial Judge has further recorded in the impugned judgment that in complaint, petitioner / complainant stated that he used to have a show room at Nehru Place and the respondent / accused was his tenant in the same trade.

25. Ld. Trial Judge after going through the affidavit of petitioner / complainant tendered during his examination in chief has observed that the petitioner / complainant nowhere talked about the fact that the loan was taken by respondent / accused for Ravinder and cheques were handed over by saying that the cheques were given by Ravinder. It is mentioned in the affidavit that in discharge of his part liability, respondent had issued the cheques.

26. After going through the complaint, affidavit and other documents on record, ld. Trial Judge came to the conclusion that all the cheques have not been drawn by the respondent / accused and instead same have been drawn by Ravinder Gupta.

27. Ld. Trial Judge was of the opinion that it is quite improbable to the court that when cheques were given to the petitioner / complainant he was not having knowledge and the same were bearing signatures of Mr. Ravinder Gupta. Even it appears from the complaint that the cheques were received by the petitioner / complainant as if the same were drawn by said Ravinder Gupta for whom the loan was given by the petitioner.

28. Ld. Trial Judge has also finds that no evidence has been adduced by the petitioner / complainant to prove this fact. Therefore, he observed that in the absence of the same, it cannot be held that some of the cheques in the name of Mr. Ravinder Gupta were in fact signed by the respondent / accused.

29. I note in the connected Crl. L.P. 230/2011, ld. Trial Judge has recorded in Para 23 of the impugned judgment that during cross-examination the petitioner / complainant deposed on 25.08.2007 that he had not given any other loan to respondent / accused or any other person. On other occasion, during his cross-examination, he reiterated that he had no other transaction with the respondent / accused. He further deposed that he had given Rs.5,00,000/- to respondent / accused and loan was given in April – May, 2004.

30. Ld. Trial Judge further observed that it is noteworthy that on 05.05.2008, complainant / petitioner during his cross-examination admitted that he had sent legal notice dated 20.3.2004 and he unequivocally admitted having issued the same.

31. As per the version of petitioner / complainant, document Mark A was sent by him to respondent / accused, therefore, the document was

duly proved as per the provision of Act and can be read in evidence in so far as the use of same by the respondent / accused is concerned. Two very relevant and important factor proves from the said letter Mark A dated 20.03.2004 (legal notice) contrary to the assertions made by the petitioner during his cross-examination that he never had any other money transaction with the respondent / accused.

32. The petitioner / complainant was having money transaction with respondent / accused prior to month of March, 2004, and secondly according to complainant having taken loan of Rs.1,56,500/- in the year 2002 and 2003 from the petitioner / complainant on different occasions. The respondent / accused failed to make payment to the petitioner / complainant despite several requests were being made by him.

33. On perusal of Document Mark A, the Id. Trial Judge observed that the contents of which have been admitted by the petitioner / complainant, also proved that the respondent / accused was not in a position to repay his loans taken in the year 2002-2003, whereas as per the statement made by the petitioner / complainant, respondent / accused was having very good financial position. According to the petitioner / complainant, the loan was given by him to the respondent / accused in the month of April – May, 2004. As per the testimony of CW1/petitioner the loan amount was Rs.5,00,000/- As per the contents of documents Mark A as mentioned above, it has been established that having taken loan of Rs.1,56,000/- up to the month of February, 2003, respondent / accused had failed to repay his loan to the petitioner / complainant despite several requests made by him.

34. In these circumstances, the Id. Trial Judge was of the view, when the respondent / accused was already heavily indebted to the petitioner / complainant and he was unable to discharge his liability, it does not seem probable that in the month of April and May, 2004, petitioner / complainant would give another huge amount of Rs.5,00,000/- to the respondent / accused.

35. Id. Trial Judge further perused the document Mark A, which was admitted by the petitioner / complainant during his cross-examination on 05.05.2008. It has been proved that earlier whenever the respondent / accused had taken loan from the petitioner / complainant, documents were executed between them and loan was given on interest as high as 24% per annum. In the face of the document mark A it appears to the Id. Trial Judge it is highly improbable that subsequently, petitioner / complainant would give loan to respondent to the extent of Rs.5,00,000/- without insisting upon any paper formalities and without any interest.

36. On asking the source of income, from where he got the money, he took different stands and stated that he sold his property and out of the said property he had given money to respondent / accused. Subsequently, he changed his stand by saying that property was sold by his parents to whom he represented as power of attorney and the money was given by his parents to him. On other occasion, he deposed that he sold the property as power of attorney of his parents and kept the money. Subsequently, on enquiry from the petitioner / complainant as to how much money was given by his parents to him, he could not tell the exact figure and merely said that his father used to give him

money from time to time. When the petitioner / complainant was confronted with the question whether the money was given as loan or gift, he again answered evasively.

37. On one occasion, on being asked by the Id. Counsel for the respondent / accused, as to for what consideration, the property of his parents were sold, he did not reply and evasively merely stated that the property was sold at very high rates, but subsequently on other occasion, he put the figures at Rs.7,65,000/-.

38. On being further asked by Id. Counsel for the respondent / accused as to how many accounts he was maintaining in the year 2003-2004, to this question, he replied evasively and never disclosed as to how many bank accounts he was having in the said years.

39. More so, the petitioner never produced documents, of the property sold by his parents. In this regard, also, he had taken different stands on different occasions.

40. The glaring fact came before the trial court is that during examination, he produced copy of his Income Tax Return Ex.CW1/D5 for the financial year 2003-2004 wherein his total income from all sources for the financial year 2003-2004 has been shown as Rs.70,621/- only. In income tax return for the year 2003-2004, the petitioner / complainant did not show the money received from his parents, although according to him, he received the money which was ultimately given to respondent / accused as loan in the last month of Year 2003.

41. The petitioner / complainant could not prove that he was having financial capacity to given loan of Rs.5,00,000/- to the respondent /

accused, thus the respondent / accused succeeded in rebutting the presumption under Section 118(a) and 139 of the NI Act and has succeeded in proving that the even alleged cheques were issued not to discharge any legally enforceable debt or liability.

42. On perusal of the cheques on record, it is clear that all the cheques are of same dates and of the amounts of Rs.25,000/- each. If the respondent/ accused had issued cheques in favour of the petitioner / complainant in discharging the liability, then he would have been issued one cheque instead of so many cheques.

43. It is also not the case of the petitioner / complainant that he issued post-dated cheques of different dates.

44. The respondent / accused submitted that he made complaint regarding misusing of his cheques to the police. However, same could not be proved to the effect that the concerned police station weeded out the record of that year.

45. Though, Id. Counsel for the petitioner / complainant has referred the cases of (i) M/s. Investor Plaza vs. Vijay Sachdeva & ors.2010 X AD (Delhi)405 (ii) V.S. Yadav vs. Reena 172 (2010) Delhi law Times and (iii) Rangappa vs. Mohan AIR 2010 SC1898, however, in the facts and circumstances of the case, cases referred above, could be helpful if the petitioner / complainant has led evidence in that effect. In the absence of the same, all these judgments referred above have no relevance.

46. I am of the considered view that neither the petitioner / complainant had the capacity to pay loan nor he could disclose any source of income by which he was in a position to advance loan to

respondent / accused. More so, the evidence against respondent / accused is contrary to his submission. At every stage he continued to change his stand and tried to justify his version. There is a contradiction between what he stated in the complaint and what he deposed before the court. Even the evidence led by way of documents are contrary to the complaint made against the respondent / accused.

47. In the facts and circumstances of the case, I find no discrepancy in the orders passed by Id. Trial Judge by acquitting the respondent / accused. Therefore, I am not inclined to interfere with the same. The instant petitions are devoid of any merit.

48. Accordingly, Crl. L.P. 228/2011, 229/2011, 230/2011, 231/2011 and Crl. L.P. 232/2011 are dismissed.

49. No order as to costs.

SURESH KAIT, J

MARCH 26, 2012

Jg