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

\+ CRL.L.P. 652/2017, Crl. M.A. 18518-19/2017

RAMESH KUMAR CHETIWAL ..... Petitioner

Through: Mr. S.N. Mehrotra, Ms. Zeenat Malick and Ms. Sandhya Chaturvedi, Advs.

versus

STATE (GOVT OF NCT OF DELHI & ANR) ..... Respondent

Through: Mr. Tarang Srivastava, APP for State

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 13.11.2017

The petitioner has impugned the order dated 3.8.2017 in Complaint Case No.1767/2015 dismissing his claim for Rs.4,50,000/- against the respondent, on the following three grounds:

i) that it was admitted that the cheque issued pertain to the account of the respondent;

ii) that the signature of the respondent had been proven; and

iii) that the cheque was dishonoured on account of “insufficient funds”.

It is argued that when the act of dishonour of the cheque is established, nothing further is required to be proven under Section 138 of the N.I. Act.

However, the impugned order did not find the contention tenable because, although there is a presumption under section 139 of the Negotiable Instruments Act that the cheque was issued in the discharge of a debt or liability, it is rebuttable presumption. The respondent had rebutted the presumption by showing that the cheques were issued as security only against a loan of Rs.50,000/- and not Rs.4,50,000/- as claimed by the petitioner. The latter had set up a case that he had loaned Rs.4,50,000/- after himself obtaining two loans of Rs.3.00 lacs and Rs.1 lac from Medical Institute Employees Co-Operative Thrift and Credit Society Limited on 6.12.2013 and from New Rising Star Co-Operative Thrift and Credit Society on 13.01.2014 with interest @ 12% and 16.5% per annum respectively. The petitioner/complainant had claimed that the respondent had sought a loan for the said amount of Rs.4,50,000/- in October, 2013 after which the said amount was given to him, but it is nowhere specified as to the date and the rate of interest at which the loan was given to the respondent. Indeed, the petitioner was not even certain about the year in which the loan was given. The impugned order finds the same rather odd that the lender would neither know the year nor the month nor the day on which the said amount was loaned nor be specific about the rate of interest at which it was so given. The impugned order further noted that neither the complaint nor his affidavit of evidence mentions that the loan was given in multiple instalments, but during the recording of his evidence he deposed that the loan was given in 7-8 instalments. There is an obvious variation in the complainant's complaint and the evidence led in its support, hence the trial court found it rather illogical as to why the loan would be advanced in 7-8 instalments. Lastly, the petitioner's/complainant's case was found to be not believable he had claimed that the three cheques issued by the respondent had been given to him in March-April, 2014 but the accused had examined the bank officer concerned from State Bank of India, who in turn had deposed that the respondent's account bearing No.34105861970 had been opened in September, 2014. Logically, therefore, the cheque book could not have been issued to the account holder prior to the date of the opening of the account. Hence, the impugned order concludes that the complaint could not be established nor could it prove all the ingredients of the offence punishable under section 138 of the N.I. Act. Apropos the statutory inference and presumptions, the impugned order notes that:

> *"as the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption ".*

The impugned order relied upon the dicta of the Supreme Court in ***K. Bhaskaran V. Sankaran Balan*** 1999 (7) SCC 510 which held as under:

> *"offence under Section 138 of the Act can be completed only with the concatenation of a number of facts namely, (i) drawing of the cheque; (ii) presentation of the cheque to the*

bank; (iii) returning the cheque unpaid by the drawee bank; (iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; (v) failure of the drawer to make payment within 15 days of the receipt of the notice".

It also relied upon the dicta of the Supreme Court in ***Rangappa vs. Sri Mohan*** 2010(11) SCC 441 which held as under:

"14. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that

the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of `preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own".

In view of the aforesaid discussion and the conclusion of the Trial Court that the petitioner was unable to establish that the cheques were issued in the discharge of a debt or liability and/or that a loan had been given by the petitioner to the respondent or that any debt or liability was owed by the respondent to the petitioner, the reverse onus clause under section 139 of the Negotiable Instrument Act has been duly discharged by the respondent. The respondent has led evidence through DW-2 i.e. one Mr. Rohtank Diwakar who has stated that an amount of Rs.50,000/- was given by the complainant to the accused in March, 2014. The accused had stated that he had taken a loan for Rs.50,000/- and had repaid it. Therefore, nothing more was repayable by him i.e. he owed no debt or liability to the petitioner/complainant.

In view of the above, the Court finds that the reasoning for and conclusion arrived at in the impugned order does not suffer from any infirmity which would warrant interference or alteration by this Court. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

NOVEMBER 13, 2017/acm