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

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Reserved on: 08.08.2023
Pronounced on: 21.08.2023

+ **CRL.REV.P. 527/2018**

DEVENDER DAMLE

..... Petitioner

Through: Ms. Anital Sahani and Ms.
Leelawati, Advocates

versus

CHETNA VERMA& ANR.

..... Respondent

Through: Mr. H.C. Suri, Advocate for R-
1.
Mr. Satish Kumar, APP for the
State/R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant revision petition under Section 397 of the Code of Criminal Procedure, 1973 (*hereinafter 'Cr.P.C.'*), has been filed on behalf of the petitioner seeking setting aside of judgment dated 26.05.2018 passed by the learned Additional Sessions Judge-02, Central, Tis Hazari Courts, Delhi (*hereinafter 'learned ASJ'*) whereby the Criminal Appeal No. 544844/2016 filed by the petitioner was dismissed.



2. In the present case, the petitioner *vide* judgment dated 23.03.2015 was convicted for offence under Section 138 of Negotiable Instruments Act, 1881 (*hereinafter* 'NI Act') by the learned Metropolitan Magistrate (NI Act)-1, Central, Tis Hazari Courts, Delhi (*hereinafter* 'learned MM') in CC No. 2799/2010 titled "Chetna Verma vs. Devender Damle". Further, *vide* order on sentence dated 25.03.2015, the petitioner was sentenced to undergo simple imprisonment of three months and to pay a combined fine of Rs.40 lakhs, out of which Rs.39 lakhs was to be paid as compensation to the complainant and remaining Rs.1 lakh as fine, and in default of payment of same, to undergo further simple imprisonment for three months.

3. Briefly stated, the case of complainant was that she and the petitioner were known to each other for more than nine years and there were friendly relations between their families for more than twenty two years as on the date of filing of the complaint. It was alleged that in July 2006, the accused/petitioner had approached the complainant on pretext that he was going through a tough time financially and he had come up with a lucrative business proposal for the complainant and had convinced her to finance a project which would yield handsome profits to her, for which he had sought a loan of Rs.14 lakhs from her. The complainant had accordingly agreed to advance a loan of Rs.14 lakhs to the petitioner on payment of interest at the rate of 3% per month. It was stated by the complainant that the petitioner was regular in paying interest on loan amount and he had again approached her in the month of August, 2007 for another loan



and the complainant after considering his past conduct, had agreed to advance the second loan amount to him by selling of her jewellery, thereby giving another loan of Rs.14 lakhs to the petitioner on same rate of interest. It was averred that to liquidate the liability of Rs.28 lakhs, the petitioner had issued three cheques bearing number 549169, 549166 and 551750, all drawn on Bank of Maharashtra, Karol Bagh branch, New Delhi, duly signed by the petitioner. It was averred that the petitioner had asked the complainant to fill the details of the cheques and withdraw the money in case he failed to pay the interest. The complainant had stated that initially, the petitioner had paid interest in cash regularly, but after November 2007, he had started defaulting in the payment of interest and in July 2008, the complainant had asked the petitioner to repay the loan amount. Thereafter, as alleged, the petitioner had given an undertaking to repay the loan amount within a year and that in case of his failure to do so, the complainant could encash the cheques in question. Thereafter, since the petitioner had failed to repay the loan amount, the complainant had presented the cheques i.e. cheque no. 549166 for Rs.10 lakhs, cheque no. 551750 for Rs.15 lakhs and cheque no. 549169 for Rs.3 lakhs, for encashment, however, the same had returned unpaid with remarks “funds insufficient”. It was stated that the complainant had again presented two of the cheques for encashment but they had again got dishonoured for the reasons “funds insufficient”. Thereafter, the complainant had issued the statutory legal notice to the petitioner demanding repayment of the



loan amount and upon his failure to do so, she had filed the present complaint case before the learned MM.

4. During the course of trial, the complainant got herself examined as CW-1 and the evidence of complainant taken on affidavit at pre-summoning stage was tendered during the trial. She also proved the other documents such as her affidavit, the cheques in question and their return memos, the legal notice issued to the petitioner as well as the postal receipts of the same.

5. Statement of the accused/petitioner was recorded under Section 313 of Cr.P.C. whereby the petitioner denied all the allegations levelled by the complainant and stated that there were no financial transactions between them. He also denied filling in of the particulars i.e. the name of drawee, the amount and date on the cheque, and also denied that the cheques were issued in discharge of any legal liability. He claimed that the cheques were issued as security for a loan procured by the complainant in his name but admitted that the cheques in question were drawn on his bank account and bore his signatures. He also admitted having received the legal notice from the complainant. In the defence evidence, the petitioner also examined himself as DW-1 and contended that the cheques in question were issued somewhere between January to April 2010 as the complainant and her family members were in great financial difficulties and they had lost all financial credibility in the market, and he had issued the cheques to enable them to procure loans by showing his blank cheque as security and to show their financial soundness to the potential creditors. The petitioner also



contended that the complainant did not have financial competence to give him any loan. The petitioner had also examined an official from Income Tax Office who had stated that income tax returns which were summoned by the Court could not be produced as they were not traceable despite best efforts of the department.

6. After hearing the final arguments and appreciating the evidence on record, the petitioner herein was convicted under Section 138 of NI Act by virtue of judgement dated 23.03.2015, the operative portion of which reads as under:

“...Summing up the cogitation above and in the ultimate analysis:-

- a) The conduct of the accused in not seeking return of his cheques, before or after the first dishonor;
- b) Not having filed any complaint against misuse of cheques by the complaint;
- c) Not having stopped payments on the cheque at any point of time, even after the first dishonor;
- d) The non reply to the legal notice admitted to have been received;
- e) The non examination of so called creditors of the complainant, with whom accused claims to have stood surety, in evidence, which leads to adverse inference of suppression of best evidence.
- f) The total lack of material showing accused's financial capability to have stood surety for the complainant, and conversely the complainant's comfortable financial position having been shown satisfactorily, the complainant having accounted for the money stated to have been advanced to the accused and the authenticated IT returns corroborating the same.
- g) The cheques having been demonstrated to have been issued not as security but for an outstanding due.

All these factors seen cumulatively, render the defence of the accused unworthy of credence. The defence of the accused does not seem like a plausible and reasonable defence. It is manifest that the accused has not been able to either prove the lack of legal



liability or even make the non existence of the liability probable enough for a reasonable person to believe the same. The presumption u/s 118 & 139 of the NI Act, having gone un rebutted and the complainant having satisfied the essential requirements of Section 138 of the N.I. Act. The accused Devender Damle stands convicted of offence u/s 138 of the N.I. Act...”

7. Further, the operative portion of order on sentence dated 25.03.2015 reads as under:

“...Therefore, after a balancing of the aggravating and mitigating circumstances in the case, and in view of the larger mischief sought to be remedies as outlined above, I feel ends of justice will be met if the convict is sentenced to 3 months simple imprisonment and ordered to pay a combined fine of Rs. 40,00,000/- out of which Rs. 39,00,000/- shall be payable to the complainant as compensation u/s 357(1) of the Cr.P.C. Rest of the amount (i.e. Rs. 1,00,000/-) be deposited with the State as fine.

In default of payment of fine, the convict shall undergo a further simple imprisonment for three months...”

8. Aggrieved by the decision of learned MM, the petitioner had preferred an appeal before the learned ASJ, who was pleased to dismiss the appeal, thereby upholding the judgment and order on sentence passed by the learned MM. The concluding portion of impugned judgment dated 26.05.2018 passed by learned ASJ reads as under:

“32. For the foregoing reasons, I am of the view that impugned judgment dated 23.03.2015 does not suffer from any illegality which calls for interference. I accordingly uphold the impugned judgment dated 23.05.2015 vide which appellant was convicted for the offence punishable under section 138 of the NI Act.

33. I also uphold that impugned order on sentence dated 25.03.2015. The substantive sentence awarded to the appellant cannot be said to be on highside, it is in fact on lowside, I do



not find any ground for . reducing it. Appellant is directed to surrender before the Ld. Trial Court. If does not do so, the Id. that counsel shall take steps to procure his presence and commit him imprisonment to undergo the sentence awarded to him. The balance fine shall be paid by appellant within one week from today failing which appellant shall undergo the sentence awarded by Id. Trial Court in default of payment of fine...”

9. Aggrieved by aforesaid decisions passed by both learned MM and learned ASJ, the present revision petition has been preferred by the petitioner.

10. Learned counsel for the petitioner argues that both the Courts below have failed to appreciate the evidence correctly and have wrongly convicted the petitioner for offence under Section 138 of NI Act. It is stated that the complainant had failed to prove that any loan had been advanced by her to the petitioner as no dates or particulars of the loan, alleged to have been given in cash, had been provided and even the relevant income tax returns were not available on record to prove the same. It is also stated that there was no record to show payment of any interest by the petitioner on the loan amount or any document like promissory note etc. to substantiate that the alleged loan was obtained by the petitioner. It is also stated that the details regarding source of loan or payment of interest are not disclosed either in the legal notice or in the complaint. It is also stated that the story of petitioner giving a lucrative business proposal to the complainant is belied by her own evidence when she says that the petitioner had not given any details of the said venture. It is further argued that complainant and her husband were themselves in financial difficulty and they could not have arranged for the loan



which they had allegedly advanced to the petitioner herein. It is stated that the complainant had failed to prove the sale of jewellery because to prove the same, photocopies of affidavits of the alleged purchasers were produced before the Court which could not have been relied upon. It is also argued that no record of cash transaction of loan has been proved by the complainant and several income tax returns were not even available on record and the income tax officer who was examined had also stated that the complainant may not have filed her return for assessment year 2007-08. It is also stated that the complainant had admitted that she had filled up the blank cheques herself which were given by the petitioner to her for obtaining credibility in the market and for securing loans from her her creditors namely Sh. Sanjay Sharma and Sh.BR Ahuja. It is stated that the complainant had failed to examine her mother-in-law to prove that she had obtained a loan of Rs.6.35 lakhs from her mother-in-law which she had used to advance loan to the petitioner for the first time. It is also stated that she had failed to examine Sh. Jasveer Singh and Sh. Chiddha Singh who were the alleged purchasers of her jewellery and thus, she was unable to prove the factum of having advanced a second loan to the petitioner. In a nutshell, it is the case of petitioner that both the Courts below have not appreciated the evidence in the correct manner and there are several contradictions in the case set out by the complainant in her legal notice, complaint under Section 138 of NI Act, and in her evidence during the trial. Thus, it is prayed that impugned judgment be set aside and petitioner be acquitted in the present case.



11. On the other hand, learned counsel for respondent no. 1/complainant submits that the learned MM and the learned ASJ have passed comprehensive judgments covering each and every aspect of the defence of petitioner and after thoroughly examining the evidence on record, they have rightly convicted the petitioner for offence under Section 138 of NI Act. As regards the grant of first loan, it is argued that balance sheet of assessment year 2007-08 reflects the loan of Rs.6.35 lakhs taken by the complainant from her mother-in-law which was employed to give loan to the petitioner and it is further stated that in income tax returns of year 2006-07, the complaint is shown to have had Rs.6.5 lakhs in home chest and about Rs.1.7 lakhs as cash in hand, which shows the financial capability of the complainant to have advanced loan to the petitioner. It is also stated that the authenticated copies of the returns filed by the concerned department before the learned MM also clearly proves the claims made by the complainant including the sale of jewellery of about Rs.15 lakhs and advancing loan to the petitioner to the tune of Rs.28 lakhs. It is argued that the sale of jewellery is proved on record by the records of income tax department itself and thus there is even no need to advert to any other evidence to prove the same. It is stated that the contentions qua filling up of some details in cheques, financial capacity of the complainant, and all other contentions raised before this Court have already been considered and answered by both the Courts below and, thus, there is no occasion to interfere with the impugned orders and the conviction recorded under Section 138 of NI Act.



12. This Court has heard arguments addressed by both the learned counsel for petitioner as well as learned counsel for respondent no. 1/complainant. The material on record, including the orders of both the Courts below, and the written submissions filed by both the parties have been perused and considered.

13. Since the present revision petition has been filed under Section 397 of Cr.P.C., in essence assailing concurrent findings of both the Courts below, this Court is only required to assess the correctness, legality or propriety of the impugned judgment.

14. To put it succinctly, the petitioner contends that the Courts below have failed to appreciate the evidence correctly on the issues which are summed up as under:

- i. the complainant had admitted that she had filled the details on the blank cheques herself;
- ii. the cheques were given by the petitioner to the complainant so as to enable her to show these cheques to her creditors as security and obtain loans;
- iii. the complainant had failed to prove the factum of having advanced any loan to the petitioner as she did not furnish any specific details and particulars qua the same;
- iv. the complainant had no financial capacity to advance loans to the petitioner and the evidence adduced by her was insufficient to prove to the contrary;
- v. the evidence brought on record by complainant to prove grant of first loan after obtaining the same from her mother-in-law and grant of second loan after selling her jewellery was insufficient



and inconsistent owing to several discrepancies, non-examination of relevant witnesses, etc;

15. Having perused the trial court record and the judgments passed by both the learned MM and learned ASJ, this Court is of the opinion that both the Courts have already dealt with the aforesaid contentions of the petitioner in detail and have returned their findings on the same.

16. With regard to the contention that cheques in question were blank signed cheques and the details on the same had been filled by the complainant, this Court notes that it was not even the case of complainant that she had not filled some of the details on the cheques. It was, in fact, stated by the complainant herself that petitioner had handed over the cheques to her and had asked her to fill and deposit the same if he fails to repay the loan amount. The petitioner, at the outset, had accepted that the cheques had been signed by him and drawn on his bank account. In this regard, this Court notes that it was rightly held by both the Courts below, after taking note of judicial precedents, that the law did not require the entire cheque to be filled by the drawer only and if the signatures were admitted, the person signing the cheque would be liable to the holder for the amount as mentioned in the cheque, in due course. To this effect, the Hon'ble Supreme Court in *Bir Singh v. Mukesh Kumar*(2019) 4 SCC 197, has observed as under:

"33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, **makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces**



evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. **If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque.** The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

(Emphasis supplied)

17. Furthermore, as rightly held by the learned MM, when the signatures on the cheques had been admitted by the petitioner, the presumption under Section 118(a) and 139 of NI Act would arise and it would be presumed that the cheques in question had been issued by the petitioner towards some legally enforceable debt. However, such a presumption can be rebutted by an accused by raising a probable defence. The law on this preposition is well-settled and for the same, a reference can be made to the decision of Hon'ble Apex Court in



case of *Basalingappa v. Mudibasappa* (2019) 5 SCC 418, whereby it was held as under:

“25. We having noticed the ratio laid down by this Court in the above cases on Sections 118 (a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence.”

(Emphasis supplied)

18. Thus, the contention raised on behalf of petitioner that since the complainant had filled the details on the blank signed cheque handed over to her by the petitioner, the same would lead to an inference that there was no legally recoverable debt, is without any merit.

19. As regards the argument that cheques had been given to the complainant in first quarter of year 2010 so as to enable her to procure loans by showing these blank signed cheques to her creditors



as security, this Court notes that petitioner (DW-1) during his evidence had admitted that on the basis of these cheques, the complainant had obtained loan in cash from her creditors and had also repaid the same. However, as revealed from records including cross-examination of the petitioner, the petitioner thereafter had not asked the complainant to return his blank signed cheques nor he had lodged any complaint in this regard with the police or any other department. It is also a matter of record that the complainant had presented the cheques for encashment not only once but twice, however, the petitioner had even then neither approached or contacted the complainant, nor he had given any reply to the legal notice sent by her despite having received the same. It is also clear from the records that the complainant in her cross-examination had denied that she had lost her credibility in the market and that she had requested the petitioner to stand as a security for her before her creditors Sh. Sanjay Sharma and Sh. B.R. Ahuja. On the other hand, the petitioner had made no efforts to examine the said persons in defence evidence, who as per his theory, were the creditors of the complainant and for whose assurance, the petitioner had handed over these cheques to the complainant. Further, the petitioner did not bring on record any material to establish even his own financial soundness and credibility as he had neither filed his bank statements nor his income tax returns before the Court. Thus, the aforesaid defence raised by the petitioner that the cheques were not issued toward a legally enforceable debt did not hold any ground. Having observed so, this Court does not find any infirmity with the detailed



reasons recorded by the learned MM and re-iterated by the learned ASJ in this regard.

20. Moving further, it was also contended that the complainant had not adduced sufficient and consistent evidence to support her version that she had given loans of Rs.14 lakhs each to the petitioner on two occasions for which the petitioner had handed over blank signed cheques to her. In this regard, it can be observed that other than her oral testimony, the complainant had produced photocopies of her income tax returns for assessment year 2004-05 till 2011-12 alongwith balance sheets. All these documents reflected that the complainant had advanced loans to the petitioner amounting to Rs.28 lakhs. As far as the other contention that income tax officer had informed the Court that income tax returns of the complainant for several years in between were not available with them is concerned, it is to be noted that the officer concerned had informed the Court that the department was not able to procure the required documents despite best efforts as the voluminous records had got mixed up due to shifting of their offices. Further, as regards the argument that the complainant was not financially strong so as to have advanced any loan to the petitioner, the complainant had stated that for the grant of first loan to the petitioner, she had obtained a loan of Rs.6.35 lakhs from her mother-in-law and taken rest amount from the chest reserves of home and for the second loan, she had sold her jewellery. These averments of the complainant were also corroborated from her income tax returns and other material produced by the complainant.



At this point, this Court deems it apt to take note of the observations of the learned MM on these aspects which read as under:

“6.4.1 The photocopies of income tax returns for the AY - 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 were promptly filed by the complainant as Mark 'X'(Colly) to corroborate her stand, these returns prima facie manifested the grant of loan to the accused. The IT returns for the AY-2008- 2009, 2009-2010, 2010-2011 & 2011-2012, manifested that the loan granted to the accused was disclosed in the balance sheets supporting the IT returns and loan of Rs. 28,00,000/- to the accused Mr. Devender Damle has been shown in the returns. As regards returns of the Assessment Year 2007-2008, a loan to of Rs. 14,00,000/- is shown to have been advanced to the accused. It would be apposite to remember that this corroborates the story of the complainant to the effect that the total loan of Rs. 28,00,000/- was given to the accused in two installments, firstly in July, 2006 and then in August, 2007. The Balance Sheet annexed to Assessment year 2007-2008 reflects loan of Rs. 6,35,000/- taken by the complainant from her mother, which could have been employed to give the loan to the accused in addition to chest reserves, cash in hand. As regards the first loan, in the returns of AY-2006-2007, The complainant is shown to have Rs. 6,50,000/- in home chest and Rs. 1,68,906/- as cash in hand. This probablises the financial capability of the complainant to have granted the loans. The giving of second loan of Rs. 14,00,000/- was demonstrated by the proceeds from the sale of jewellery.

6.4.4 Ld. Counsel for the Accused has argued with great vehemence that adverse inference need to be drawn against the complainant for having not procured the rest of the IT returns. To my mind, this is an argument thoroughly misconceived, no case for adverse inference is made out in view of the fact that it is the IT department who has been unable to find out the authenticated IT returns. The complainant could at best have filed the copies of returns available with her, which she has filed. If the department has, due to sheer negligence or otherwise, lost the copies, the necessary action under the law shall follow against him, but the complainant cannot be made to pay for the lackadaisical approach or loss of records by the department...

...Let us now turn to the authenticated copies of returns filed by the departments. The department has filed the duly authenticated copy of computation of taxable income filed by the complainant



for the AY 2008-2009. The same clearly shows the sale of jewellery of about Rs. 15,00,000/- by the complainant, which she claims to have utilized to advance the second loan of Rs. 14,00,000/- to the accused. In the balance sheet the loan advanced by the complainant to the accused to the tune of Rs. 28,00,000/- is also clearly shown. Now this computation pertains to the year 2008-2009 i.e. even before handing over of the cheques in question, which have been admitted by the accused to have been issued in the first quarter of 2010 and much before the filing of the present case. The disclosures being antecedent in point of time to the cheques and naturally the present case, there is no reason therefore to disbelieve the same. It would amount to stretching the imagination too much, to assume that the complainant might have planned the use of cheque and filing of the case and to fabricate evidence to that end disclosed the loan in her computation in the year 2008-2009. This goes against the grain of ordinary human conduct and amounts to giving wings to flights of fancy too much...

...All in all for the foregoing reasons the financial capability of the complainant is clearly discernible. It deserves mention that as against this, the accused has not filed even an iota of evidence to substantiate the fact that he was in a good financial condition so as to be able to stand surety for the complainant. In a situation like this where the court has to go by preponderance of probabilities, the case superior in weight or the more probable case has to be preferred, in this, the complainant's case is clearly more superior and the accused's defence unworthy of belief..."

21. After going through the aforesaid observations of the learned MM as well as the view taken by learned ASJ and having considered the records of the case, this Court does not find any reasons to take any view other than the one taken by both the Courts below.

22. With respect to the contention that the Courts have wrongly relied upon the affidavits of alleged purchasers of jewellery of the complainant, it can be very well observed in the judgment passed by learned MM that he has not relied upon the affidavit of these purchasers, rather has categorically returned a finding that the



authenticated copy of computation of taxable income filed by the complainant for the assessment year 2008-09, as produced by the department concerned before the Court, reflected the sale of jewellery of about Rs.15 lakhs, which the complainant claims to have utilised towards advancing loan of Rs.14 lakhs to the petitioner.

23. Thus, this Court is also of the view that the defence raised by the petitioner was not sufficient to rebut the presumption raised against him under Section 118(a) and 139 of NI Act, and where the issuance of cheques and signatures on the same were not disputed and when the complainant was sufficiently able to establish the factum of having advanced loans to the petitioner as well as their sources, this Court find no infirmity with the judgment passed by the learned ASJ vide which the conviction of the petitioner under Section 138 of NI Act as recorded by the learned MM was affirmed.

24. Accordingly, the present petition stands dismissed, alongwith pending applications if any.

25. The petitioner is hereby directed to pay the remaining amount of fine/compensation as awarded by the learned MM and surrender within 15 days before the Trial Court concerned to serve the substantive sentence as awarded to him vide order on sentence dated 25.03.2015.

26. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 21, 2023/ns