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

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Date of Decision: 18.03.2024

+ CRL.REV.P. 368/2024, CRL.M.(BAIL) 453/2024

PREM PAL SINGH

..... Petitioner

Through:

Mr. Brijesh Kumar Singh, Adv.

versus

(1) STATE

(2) RAMESH PAL SINGH

..... Respondents

Through:

Ms. Kiran Bairwa, APP for State with
SI Sanjeet, PS Malviya Nagar.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A. 8322/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.REV.P. 368/2024 & CRL.M.(BAIL) 453/2024

1. Criminal Revision Petition under Sections 397 and 401 of the Code of Criminal Procedure has been preferred against the impugned judgment dated 15.02.2024 passed by the learned ASJ-05 (South), Saket Courts, New Delhi in CA No. 124/2023. Vide the aforesaid judgment, the conviction vide judgment dated 06.03.2023 and order on sentence dated 12.04.2023 passed by the learned M.M., have been upheld.

2. Brief factual position, as noticed by the learned M.M. in paragraph 2 of judgment dated 06.03.2023 may be reproduced for reference :



“The present complaint alleges, inter alia, that complainant and accused were having good terms with each other. In the last week of October, 2020, accused approached the complainant for a friendly loan of Rs. 2,00,000/- for the marriage expenses of his son and represented that he would return the loan amount to the complainant before March 2021. On this, complainant gave Rs. 2,50,000/- to the accused on 08.11.2020 in cash and the accused assured to return Rs. 2,50,000/- by the March 2021. On 08.11.2020 itself, in discharge of his legal liability of repayment of loan amount, the accused issued a cheque bearing no. 317670 which is Ex. CW-1/1 dated 30.03.2021 for Rs. 2,50,000/- drawn on the Delhi Co-operative Bank Ltd, Branch: 150, Main Bus Stand, Devli, New Delhi-110062 to complainant. Complainant deposited the cheque bearing no. 317670 dated 30.03.2021 for Rs. 2,50,000/- to his banker, however, the cheque had been returned unpaid vide returning memo Ex. CW-1/2 dated 02.04.2021 with the remark "Funds Insufficient" Complainant though his counsel sent a legal notice in April 2021 which is Ex. CW-1/3. Postal receipts is Ex. CW-1/4 and Affidavit is Ex. CW-1/6, no payment was made within 15 days, hence this complaint”.

3. In response to notice framed under Section 251 Cr.PC, the petitioner/accused took a defence that he had taken a loan of Rs.2 lacs with interest @ 5% p.a. from one Tej Pal Singh against which he gave two blank signed cheques to Tej Pal Singh and papers of his property as a security. The said amount was returned with interest to Tej Pal Singh except for a sum of Rs.12,000/-. However, Tej Pal Singh did not return the cheques and the property papers, for which a police complaint had been filed and also a Panchayat was called. Similar stand was taken by the petitioner/accused in his statement recorded under Section 313 Cr.PC. Petitioner further examined himself as DW-1 and DW-2 Raj Kumar in Defence Evidence.

4. Learned Trial Court, assessing the evidence of CW-1, (complainant / respondent No. 2 / Ramesh Pal Singh in the present proceedings), observed



that the complainant is a contractor of fixing marble flooring and the petitioner/accused is also involved in the work of rubbing and marble polishing. Further, the complainant had duly reflected the advancing of loan amount in his income tax return for the assessment years 2021-22 (Ex.CW-1/Z) and 2022-23 (Ex.CW-1/Y), which he had given to the petitioner / accused on 08.11.2020.

5. Learned Trial Court further noticed that petitioner / accused in his defence evidence in cross-examination stated that the complainant / respondent No. 2 / Ramesh Pal Singh was running a chit fund committee and the petitioner/accused being a member of the same and had purchased six shares in the committee for Rs.6 lacs. Further, petitioner/accused claimed to have had deposited 16 instalments out of 20 instalments and the balance amount was paid at different times. It was also noticed that DW-2 (Raj Kumar) examined on behalf of the petitioner/accused stated that there was a dispute regarding the financial transaction and chit fund committee between petitioner and respondent/complainant. He further stated that the decision of the Panchayat was reduced into writing and petitioner/accused did not comply with the same.

6. The learned Trial Court, on the basis of evidence led on record, concluded that the complainant was able to prove the loan transaction, as the advancing of loan had been duly reflected in the income tax returns filed by complainant / respondent No. 2. It was further observed that though the case of the petitioner/accused was that there was a Panchayat regarding the dispute of financial transaction, in cross-examination, petitioner / accused had brought up the issue of chit fund committee and failed to place any document on record regarding the same. Also, no document was placed on



record regarding filing of any complaint against the complainant/respondent No.2 in the police station regarding misuse of cheques after the same were handed over to one Tejpal.

7. In view of above, the learned Trial Court/ M.M. did not accept the contention of the petitioner/accused that the amount advanced by the complainant / respondent No. 2 is unaccounted and is not proved. It was further held that the petitioner/accused had failed to rebut the onus put on him by virtue of presumption under Sections 118 and 139 of N.I. Act.

8. In the appeal preferred on behalf of petitioner / accused, the findings of the learned Trial Court were assailed by the petitioner which did not find any favour with the learned Appellate Court. The learned Appellate Court also observed that since the petitioner/appellant/accused had drawn the said cheque on the account maintained by him with the Bank, the reverse onus under Sections 118 and 139 of N.I. Act lay on the petitioner/accused to show that the consideration or legally enforceable debt did not exist. Considering the evidence on record, the learned Appellate Court also did not find any ground to take a view different from the findings arrived at by the learned Trial Court. It was also observed that even in application under Section 145 (2) of N.I. Act, the petitioner/accused did not challenge the financial capacity of the complainant. Further, since the complainant was earning about Rs.30,000 - Rs.40,000/- per month from the work of fixing of marble flooring, he could have easily afforded to give a loan of Rs.2,50,000/-. The judgment rendered in the case of *APS Forex Services Pvt. Ltd. vs. Shakti International Fashion Linkers & Anr.* (2020) 12 SCC 724 relied upon by the petitioner/accused was further found to be distinguishable.

9. I have given considered thought to the contentions raised.



The principles in relation to the presumption raised under Section 118(a) read with Section 139 as settled in '**Basalingappa vs. Mudidasappa**', AIR 2019, SC 1983 in paras 17 & 23 may be beneficially reproduced:

"17. In Kumar Exports Vs. Sharma Carpets, (2009) 2 SCC 513, this Court again examined as to when complainant discharges the burden to prove that instrument was executed and when the burden shall be shifted. In paragraph Nos. 18 to 20, following has been laid down:- "18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists. 19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over. 20.The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every



case that the accused should disprove the nonexistence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist.....”.

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

- i) 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.
- ii) 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.
- iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or 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.
- iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 28 139 imposed an



evidentiary burden and not a persuasive burden.

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

10. In view of provisions of Section 139 of N.I. Act, 1881, unless the contrary is proved, it is to be presumed that the holder of cheque received the cheque for the discharge of any debt or other liability. Burden is shifted on the accused to prove by some probable evidence that there was no debt or liability. Mere denial or rebuttal by the accused in this regard is insufficient.

It is also well settled that the complainant in the first instance need not show that he had the capacity to give the loan unless a case is set up in reply to the statutory notice in this regard. However, the accused has a right to demonstrate that the complainant did not have the capacity to extend the loan which he may do so by producing independent materials by way of examining the witnesses/producing the documents on record.

11. In the present case, in the light of evidence led on record, since disbursement of loan was duly reflected in the ITR returns by the complainant/respondent No.2 for the year 2021-22 and 2022-23 and he was earning about Rs.30,000 - Rs.40,000 per month, the financial capacity of respondent No.2/complainant to extend the loan cannot be doubted. Except for a bald statement on behalf of the petitioner/accused that the said cheques were handed over to Tejpal, nothing has come on record to prove in case any such, cheques were handed over or were misused by Tejpal by passing over to petitioner.

12. In exercise of revisional jurisdiction, in absence of any perversity or cogent evidence to infer misuse of the cheque executed by petitioner, there does not appear to be any reason to upset the concurrent findings of fact. Neither there appears to be any jurisdictional error to re-analyse or



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re-interpret the evidence, as suggested by learned counsel for petitioner/accused.

For the foregoing reasons, the present revision petition is without any merits and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to the learned Trial Court for information and for the purpose of compliance of order on sentence, as passed by the learned Trial Court. Petitioner is accordingly directed to surrender before learned Trial Court within four weeks of passing of this order.

**ANOOP KUMAR MENDIRATTA
(JUDGE)**

MARCH 18, 2024/akc/dc