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

% ***Date of Decision: 18.03.2024***

+ CRL.REV.P. 374/2024, CRL.M.(BAIL) 459/2024

PREM PAL SINGH

..... Petitioner

Through: Mr. Brijesh Kumar Singh, Adv.

versus

1. STATE

2. TARA CHAND

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

% **J U D G M E N T**

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A.8441/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.REV.P. 374/2024 & CRL.M.(BAIL) 459/2024

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. 123/2023. Vide 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. The factual position, as noticed in paragraph-2 of judgment dated



06.03.2023 passed by the learned Trial Court/MM may be reproduced for reference:

“2. The present complaint alleges, inter alia, that complainant and accused were having good terms with each other. In the 1st week of November, 2020- accused approached the complainant for a friendly loan of Rs.2,00,000/- for the marriage of his son and represented that he would return the loan amount to the complainant before 20.04.2021. On this, complainant gave Rs.2,00,000/- to the accused on 09.11.2020 in cash and the accused assured to return Rs.2,00,000/- before 20.04.2021. On 09.11.2021 itself, in discharge of his legal liability of repayment of loan amount, the accused issued a cheque bearing no.317671 dated 19.04.2021 for Rs.2,00,000/- (Two Lakh Only) 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.317671 which is Ex.CW-1/1 dated 19.04.2021 for Rs.2,00,000/- (Two Lakh Only) to his banker, however, the cheque had been returned unpaid vide returning memo Ex.CW-1/2 dated 05.05.2021 with the remark “Payment Stopped By Drawer”. Complainant through his counsel sent a legal notice dated 01.06.2021 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. The facts in the present case are also on similar lines with Crl. Rev. Pet. 368/2024, which is separately dismissed. The petitioner/accused herein also took the stand that he had taken the loan of Rs.2 lacs with interest @ 5% from one Tej Pal Singh and had given two blank signed cheques to Tej Pal Singh along with papers of his property as security. Respondent No.2/ complainant was mediator in said transaction. Further, the said amount had been returned to Tej Pal Singh except a sum of Rs.12,000/-, but since he failed to return cheques and property papers, a police complaint was filed and a Panchayat was also called in this regard.

4. Petitioner/accused also examined himself along with one Raj Kumar (DW-2) and Rinku (DW-3) in defence.



5. The learned Trial Court, on the basis of evidence led on behalf of respondent No.2/complainant, noticed that the complainant/respondent No.2 had been working as Quality Controller in a tailoring shop and there was a Panchayat as stated by him. However, it was crucially noticed that DW-1 (petitioner/accused) admitted that he had taken friendly loan of Rs. 2 lacs from Tara Chand/respondent No.2/complainant, but claimed to have paid a sum of Rs.3,30,000/- against the said loan amount except for an amount of Rs.12,000/-. The same was completely in contrast with stand taken by him at the stage of notice, wherein he claimed that cheque was handed over to one Tej Pal who misused the same. It is also pertinent to note that no documents regarding return of sum of Rs.3,30,000/- were produced by petitioner/accused.

6. Learned Trial Court based on aforesaid findings, held that the presumption existed in favour of complainant/respondent No.2 of having received the cheque against debt or liability, which could not be rebutted in a casual manner by the petitioner/accused. Accordingly, the petitioner was convicted for the offence under Section 138 of N.I. Act.

7. 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.”*

8. In view of Section 139 of N.I. Act, unless 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 petitioner to prove by some probable evidence that there was no debt or liability. Mere denial or rebuttal by the petitioner in this regard is insufficient.

9. It is 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.

10. As already observed above, contrary stands have been taken by petitioner/accused at different stages of trial. Except for making bald



statement, no cogent evidence by way of preponderance of probability has been led on record on behalf of petitioner/accused to prove that the cheques handed over to Tej Pal had been misused by respondent No.2/complainant. Rather contrary stand was taken during evidence that he had paid an amount of Rs.3,30,000/- to respondent No.2/complainant without producing any documents to support the same.

11. 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 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