



2024:DHC:8470



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

Date of decision: 29<sup>th</sup> OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.L.P. 395/2024**

SEEMA DEVI

.....Petitioner

Through: Mr. Ajeet Pandey, Advocate.

versus

SURESH KUMAR

.....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioner herein, who is the Complainant in Criminal Complaint No.12970/2017, filed under Section 138 NI Act, has approached this Court challenging the Order dated 30.04.2024, passed by the learned Metropolitan Magistrate - 08 (NI Act), Dwarka Courts in CC No.12970/2017, acquitting the Respondent herein for offences under Section 138 of the NI Act.

2. The facts, in brief, as reflected in the Complaint filed by the Petitioner herein are as under:

- a) It is stated that the Respondent herein is known to the Petitioner and her husband. It is further stated that in the second week of January, 2015, the Respondent herein approached the Complainant/Petitioner herein and her husband and requested for a friendly loan of Rs.6,00,000/- for purchasing a property/Plot bearing No. 288, out of Khasra No. 43/6/2,



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Haibatpura, Najafgarh, New Delhi-110043.

- b) In the Complaint it is stated that the Respondent had undertaken that he would repay the amount within a period of 6 months. It is stated that on the assurance of the Respondent that he would repay the amount within six months, the Petitioner gave him Rs.6,00,000/- in cash as friendly loan. It is stated that the said amount was given by the Petitioner in three instalments.
- c) The Complaint further states that the Respondent herein purchased the property in the name of his wife on 03.03.2015. It is stated that after expiry of six months period and after repeated requests, the Respondent herein, in discharge of his liability, issued a cheque bearing No.116795, dated 11.03.2017, drawn on Delhi Nagrik Sehkari Bank, for a sum of Rs.6,00,000/- to the Petitioner herein. It is stated that while handing over the abovementioned cheque, the Respondent herein had requested the Complainant to not to present the said cheque till the end of April, 2017.
- d) It is stated that the said cheque was deposited by the Petitioner after 25.04.2017. However, the cheque was returned vide Memo dated 02.05.2017 with the endorsement "funds insufficient".
- e) It is further stated in the Complaint that the Petitioner herein sent a legal notice dated 22.05.2017 to the Respondent herein demanding Rs.6,00,000/- from the Respondent. It is stated that despite receipt of the notice, the Respondent has not paid the amount within the time stipulated under Section 138 NI Act.



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- f) Since the Respondent failed to repay the amount, a Complaint under Section 138 NI Act was filed by the Petitioner against the Respondent herein.
- g) It is stated that charges were framed on 24.11.2017 and the trial commenced and both parties lead evidence.
- h) The fact that the cheque had been signed by the Respondent herein, the fact that on presentation the cheque had been returned for insufficient funds and the fact that legal notice under Section 138 had been received by the Respondent herein raised a presumption against the Respondent herein under Section 139 of the NI Act. However, the Trial Court was of the opinion that the Respondent herein has been able to rebut the said presumption on the following grounds:
- i. That the Petitioner herein does not have the financial capability to give a loan of Rs.6,00,000/- to the Respondent herein. The Trial Court observed that the Complainant in her cross-examination had deposed that her husband earns Rs.45,000/- per month and she earns Rs.5,000/- per month from rental income and that their household expenditure was about Rs.10,000/- to 15,000/- per month and that she has three children. The Trial Court further observed that the Complainant had deposed that out of Rs.6,00,000/-, Rs. 3,00,000/- was from their savings and the balance sum of Rs.3,00,000/- was borrowed by the Complainant (Rs.50,000/- was borrowed from her neighbour Satish and the remaining sum of Rs.2,50,000/-



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was borrowed by the Petitioner from her brother). The Trial Court held that the Complainant has neither examined Satish nor her brother to prove that she had borrowed Rs.50,000/- and 2,50,000/- respectively from them.

- ii. The Trial Court also drew adverse inference of the fact that as per the Complaint, the loan was advanced to the Respondent herein by the Petitioner in presence of her husband, but the husband of the Complainant has not been examined.
- iii. The Trial also took into account the deposition of the Respondent herein wherein he had stated that he took Rs.50,000/- from one Surender Kumar in 2012 and the cheque in question was given by the Respondent to the said Surender Kumar. To prove the same the Respondent had produced his passbook of 2012 wherein cheque number 116794 and cheque number 116796, i.e. one cheque prior to the cheque in question and one cheque after the cheque in question, were used by the Respondent in 2012. The Trial Court was of the opinion as to why would someone given a cheque in 2017 from a cheque book which was used in 2012.
- iv. Surender Kumar was examined by the Respondent herein wherein Surender Kumar admitted that he had given Rs.50,000/- to the Respondent.
- i) On the basis of the above, the Trial Court came to the



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conclusion that it is very unlikely that a loan of Rs.6,00,000/- would have been given by the Petitioner to the Respondent without any security and, therefore, the Trial Court held that the version of the Complainant/Petitioner herein does not inspire confidence. The Trial Court was of the opinion that the Respondent herein has been able to raise a probable defence. The Trial Court, therefore, acquitted the Respondent herein vide Order dated 30.04.2024.

j) This Order has been challenged by the Petitioner in the present Petition.

3. Learned Counsel for the Petitioner contends that the Respondent has not been able to prove as to how the Petitioner herein got the question in question and, therefore, the Respondent has not been able to discharge his burden. He further states that the Petitioner has not given any complaint against Surrender Kumar for losing the cheque which he had given to him in discharge of his liability. He, therefore, states that the presumption under Sections 118 and 139 has not been rebutted by the Respondent herein and the Trial Court has erred in acquitting the Respondent for offence committed by him under Section 138 NI Act.

4. Heard the learned Counsel for the Petitioner and perused the material on record.

5. The cheque has been issued from the account maintained by the Respondent. The signature has been admitted by the Respondent and, therefore the mandatory presumption has arisen against the Respondent that the cheque that has been drawn in favour of the Petitioner is for discharge of a liability.



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6. The question which arises for consideration is as to whether the Respondent herein has rebutted the presumption and has the learned MM appreciated the facts in correct perspective.

7. This Court has gone through the depositions. The Respondent has deposed that he took Rs.50,000/- from one Surender Kumar in 2012 and the cheque in question was given by the Respondent to the said Surender Kumar and to prove the same the Respondent had produced his passbook of 2012 wherein cheque number 116794 and cheque number 116796, i.e. one cheque prior to the cheque in question and one cheque after the cheque in question, were used by the Respondent in 2012.

8. The view taken by the learned Metropolitan Magistrate that cheque of year 2012 would not be given for a transaction happening in year 2017 and the conclusion arrived at by the learned Metropolitan Magistrate that the Petitioner herein does not have the financial capability to advance a loan of Rs.6,00,000/- to the Respondent herein, cannot be said to be so perverse that no other Court would be able to come to that conclusion. In view of the above, this Court is of the opinion that the appreciation of evidence by the learned Metropolitan Magistrate cannot be said to be perverse.

9. The Apex Court in Basalingappa v. Mudibasappa, (2019) 5 SCC 418, which has also been relied on by the Respondent, has succinctly summarized the principle regarding the presumption raised under Section 139 of the Negotiable Instruments Act and is rebutted by the accused. Paragraph 25 of the said judgment reads 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)

10. A perusal of the aforesaid paragraph shows that if the accused raises a probable defence that the standard of proof of rebutting the defence is that of preponderance of probability and if a probable defence is raised, then the presumption can be rebutted. The Apex Court in Rajaram Through LRs v. Maruthachalam Through LRs, **2023 SCC OnLine SC 48**, after relying on Basalingappa (supra) held as under:-



*“27. It can thus be seen that this Court has held that once the execution of cheque is admitted, Section 139 of the N.I. Act mandates a presumption that the cheque was for the discharge of any debt or other liability. It has however been held that 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. It has further been held that 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. It has been held that 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.*

*28. In the said case, i.e. Baslingappa v. Mudibasappa (supra), the learned Trial Court, after considering the evidence and material on record, held that the accused had raised a probable defence regarding the financial capacity of the complainant. The accused was, therefore, acquitted. Aggrieved thereby, the complainant preferred an appeal before the High Court. The High Court reversed the same and convicted the accused. This Court found that unless the High Court came to a finding that the finding of the learned Trial Court regarding financial capacity of the complainant was perverse, it was not permissible for the High Court to interfere with the same.”*

11. The reasons given by the Trial Court after appreciating evidence cannot be said to be perverse. The conclusion arrived at by the learned Trial Court is a plausible view and this Court while exercising its revisional jurisdiction cannot substitute its conclusion to the one arrived at by the



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learned Metropolitan Magistrate just because another view possible. This Court, is therefore, not inclined to grant leave to appeal under Section 378(4) of the CrPC.

12. The Petition is dismissed, along with the pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**OCTOBER 29, 2024**

*Rahul*