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

+ **CRL.L.P. 37/2025, CRL.M.A. 1056/2025**

NARINDER GAMBHIR

.....Petitioner

Through: Mr. Arun Kumar, Mr. Madhur Tyagi,
Mr. Mohit Singh and Mr. Vikas
Kumar, Advocates.

versus

VIJAY KUMAR & ANR.

.....Respondents

Through: Mr. Sunil Kumar Gautam, APP for
State.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

ORDER
16.01.2025

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1. The present appeal under Section 419 Bharatiya Nagarik Suraksha Sanhita 2023¹ is directed against judgement dated 11th November, 2024² passed by the trial court, in case titled as “*Sh. Narinder Gambhir vs. Vijay Kumar*” in complaint No. 10095/2017 under Section 138 of the Negotiable Instruments Act, 1881³.

2. The Impugned Judgement acquits the accused/Respondent. Aggrieved by this decision, the Petitioner through the instant application seeks leave to

¹ “BNSS”

² “Impugned Judgement”

³ “NI Act”



appeal.

3. The Appellant (the Complainant) alleged that both the Appellant and the Respondent, residing in the same locality, shared friendly relations. In August 2016, the Respondent, facing financial difficulties in his business, approached the Appellant seeking financial assistance of ₹12 lakhs for a period of six months to overcome the crisis. The Appellant claims that, acting as a well-wisher and trusting the genuineness of the Respondent's request, he agreed to extend the financial assistance. After arranging the necessary funds, the Appellant allegedly provided ₹12 lakhs in cash, relying on the Respondent's assurance to repay the amount within the stipulated time. However, the Respondent failed to repay the loan within the agreed period. Following repeated requests and demands by the Appellant, the Respondent, in purported discharge of his legal liability, issued a cheque bearing No. 000130⁴ dated 13th June 2017, for ₹12 lakhs in favour of the Appellant. The Respondent assured that the cheque would be honoured upon presentation. However, when the Appellant presented the cheque for encashment, it was dishonoured and returned unpaid with the remarks "Funds Insufficient," as indicated in the cheque return memo dated 14th June, 2017. Upon receiving this information, the Appellant immediately contacted the Respondent to seek payment in cash. However, as the Respondent failed to provide a satisfactory response, the Appellant issued a legal notice dated 12th July, 2017, demanding repayment. When this notice also elicited no response, the Appellant initiated a complaint under Section 138 of the Negotiable Instruments Act, 1881.



4. During the trial, the Appellant proved the cheque return memo, legal notice, and deposit receipts. However, on the critical issue of establishing liability owed to him, the Appellant failed to provide sufficient evidence, leading to the rejection of the complaint. On this aspect, the decision of the Trial Court after appreciation of evidence, records as follows:

“14. In nutshell, case of the complainant as per complaint is that complainant and accused had friendly relations with each other since they lived in the same locality. Accused was facing financial problems in his business and he approached the complainant in the month of August, 2016, for a loan of Rs. 12,00,000/- for a period of six months. The complainant gave a sum of Rs. 12,00,000/- to the accused after arranging the funds from his source. Loan was given in cash. Accused failed to return the loan amount and gave cheque in question for discharge of this liability which got dishonoured.

15. Defence of accused as culled out from notice u/s 251 CrPC/statement u/s 281/313 CrPC is that he admits his signature on the cheque in question but has not filled any other particulars on the cheque in question. The cheque in question was misplaced from his office. He did not give cheque in question to the complainant. He does not have any liability towards the complainant.

16. The first contention of accused is that complainant never had the financial capacity to lend the loan in question. The cross examination of the complainant suggests that this contention has been rightly taken by the accused.

17. Complainant has stated in his cross examination that his family consists of two sons and a wife and he has not been doing any work since 2012. Before 2012, he had worked at mobile shop and electrical shop with his relatives.

18. Complainant has stated himself to be income tax payee though he does not remember, whether, or not he has filed income tax for the last 10 years or not. He has not shown the cheque amount in his ITR of the relevant year.

19. He has stated that he has not executed any written documentation qua the loan in question.

20. He has stated that his annual income for the years 2015, 2016 and 2017 was Rs. 3,00,000/- (each) and his personal monthly expenditure is Rs. 1,000-1,500/-. He has stated that his source of income in the years 2015, 2016 and 2017 is rental income from his house.

21. He has stated that the source of funds was from his personal savings and he borrowed Rs. 5,00,000/- from his wife Nirmala Gambhir and Rs.

⁴ “Impugned cheque”



4,00,000/- from his son Shubham Gambhir. He has stated that his wife is a housewife and did not withdraw this amount from bank, rather she gave this amount to him from her personal savings. He has further stated that his son gave this amount to him in cash and he is not aware whether his son withdrew the amount from bank or not. He has stated that his son is working in a company in Gurgaon and earns Rs. 1,50,000/- per month but he does not know the name of company where the son works but he is aware that the son receives his salary in his bank account. He has stated that he has no evidence qua taking the abovementioned amounts from his wife and son.

22. He has stated that there no witness as to the handing over of loan amount to the accused at the residence of the complainant even though wife of the complainant was present at the house.

23. Hon'ble Supreme Court of India as well as Hon'ble High Court of Delhi has held in multitude of judgments that acquittal is proper on prosecution in complaints u/s 138 of Negotiable Instruments Act 1881 where complainant is not able to show the source of friendly loan or solvency for the same. In other words, it was held that presumption of cheques gets dislodged where complainant is not able to give source of the amount loaned to accused. (Reliance is placed on K. Prakashan Vs. P.K. Surenderan 2008 (1) SCC 258, Kulvinder Singh Vs. Kafeel Ahmad 2013 SCC On- Line Del 34 and Kulvinder Singh Vs. Gulam Moinuddin 2022 SCC On- Line Del 3292). No Income Tax Returns have been brought on record which show the advancement of loan of such high amount of Rs. 12,00,000/-. The aforesaid fact situation has been comprehensively examined by the Hon'ble Delhi High Court in Sheela Sharma Vs. Mahendra Pal (2016 SCC OnLine Del 4696) wherein it was held that: "31. In cases where the Complainant claims to have advanced a friendly loan in cash, and where the transaction of loan is not evidenced by any other documentary' or other reliable evidence, no doubt, the aspect whether the availability of funds in cash with the Complainant/lender, and its advancement as loan to the Accused have been reflected in the income tax returns of the Complainant/lender, or not, become relevant. If, the availability of funds, and the loan transaction itself is not so reflected, that factor is taken note of by the Court as relevant to hold that the presumption under Section 118 and 139 of the NI Act stands rebutted. However, these considerations would not be relevant, where loan transaction itself is otherwise established either through documentary evidence-such as, a receipt or a loan agreement, or acknowledgement executed by the Accused, or by oral evidence of an independent witness who is found to be credible", (emphasis supplied).

24. Hence, the non-production of the ITR would be very relevant in the case like the present, where, no document has been produced by complainant to show the giving of the alleged loan. The loan does not stand proved by any independent evidence/ document. Rather, the financial capacity of the complainant itself is in doubt. The case of the complainant itself does not hold water when tested on the touchstone of the standard of a reasonable or



prudent man. It does not appeal to any reason or logic that a person who himself is not earning anything has parted away with an amount as high as Rs. 12,00,000/- to give loan to a person with whom he has mere friendly relations after borrowing huge amounts of Rs. 5,00,000/- and Rs. 4,00,000/- from his wife and son. The wife and son have not been produced as witnesses. No evidence has been produced as to alleged rental amount by the complainant. Even if any evidence as to rental income of Rs. 3,00,000/- per year as stated by the complainant would have been produced, even then, it does not seem reasonable at all to give away rental income as well as savings of wife and son as a loan to a mere friend without even any acknowledgement to that effect. Complainant has deposed that no one was present when the loan was given. The aforesaid factor of non-production of ITR coupled with irrational explanation from the complainant in respect of financial capacity/ source of funds would operate to rebut the presumption raised against the accused. Therefore, the contention that complainant never had the financial capacity to lend the loan in question is decided in favour of the accused.

25. On the other hand, case of accused sits on a better pedestal as compared to that of the complainant. Accused has stated in his cross examination that before 2017, he had a shop at Bhagirath Palace of Fancy Lighting and he knows the complainant since 2013-14 as he used to visit Bhagirath Palace Market. He has further stated that blank signed cheque was kept at his shop for payment of electricity bill. He has further stated that he did not lodge any complaint as to misplacement of cheque in question and did not intimate his bank as to loss of the cheque in question as by the time he got to know that cheque in question has been misplaced, his account had already been closed and he got to know that his cheque has been misused when he received court notice. Ld. Counsel for Complainant has argued that photocopy of Voter-ID Card (Mark X) was given by accused to complainant. Accused has stated that the Voter ID Card (Mark X) belongs to him but photocopy of voter ID card used to be kept at his shop for using the same along with the bills of the material which was used to supply outside Delhi and his staff had access to photocopy of voter ID card. Thus, accused has been able to give a cogent explanation as to loss of the cheque in question and how it might have landed in the hands of the complainant.

26. The upshot of the above discussion is that the said ingredient stands unfulfilled as against the accused. The accused has managed to rebut the presumption raised against him by showing that the case of the complainant itself, is improbable, when looked at from the standard of a reasonable man and has, therefore, established his defence on preponderance of probabilities in view of the above discussion.

27. Decision: As all the ingredients of the offence are not cumulatively satisfied against the accused, the accused Vijay Kumar is hereby acquitted of the offence u/s 138 of the Negotiable Instruments Act, 1881."



5. The Act contains provisions raising presumption relating to the negotiable instruments under Section 118(a) and 139 of the NI Act. The said presumptions are rebuttable ones. Whether presumption stood rebutted or not would depend upon the facts and circumstances of each case. The impugned judgement rests on this well-settled principle that while Section 139 of the NI Act creates a statutory presumption in favour of the holder of the cheque, this presumption is rebuttable. It shifts the onus onto the accused to demonstrate, on a preponderance of probabilities, that no liability existed. In the present case, the Appellant alleged that a friendly loan of ₹12 lakhs was advanced to the Respondent, which was sought to be repaid through the Impugned cheque. However, the Trial Court appropriately raised concerns regarding the complainant's financial capacity to extend a loan of ₹12 lakhs, particularly in the absence of any corroborative evidence. The Appellant contended that the loaned amount was sourced from personal savings and funds borrowed from his wife and son. However, this assertion remained entirely unsubstantiated. Neither the wife nor the son was produced as a witness, and no documentary proof, such as bank statements or withdrawal records, was furnished to support the claim of these transactions. Furthermore, the Appellant neither produced a loan agreement nor any written acknowledgment by the Respondent. While the absence of documentation is not fatal *per se* under the NI Act, it assumes significance when the accused effectively rebuts the presumption under Section 139 of the NI Act. The Appellant's failure to produce Income Tax Returns (ITRs) or any other credible evidence to demonstrate the source of funds further weakens their case. It is well-established that where the complainant alleges



the advancement of a substantial sum as a friendly loan, the financial capacity of the lender becomes a relevant consideration. Courts have consistently held that the presumption under Section 139 of the NI Act can be rebutted if the complainant's financial capacity to lend such an amount is successfully challenged.⁵

6. Moreover, while the Appellant claimed an annual rental income of ₹3 lakhs, no documentation was presented to substantiate this assertion. Even assuming the income was established, the Trial Court found it implausible that the Appellant, who was not gainfully employed and relied solely on rental income, would part with such a substantial amount for a loan to a mere acquaintance, without any formal acknowledgment, agreement, or security. This lack of evidence and the improbability of the transaction, viewed against the standard of a reasonable and prudent person, significantly undermined the Appellant's claim.

7. The Respondent, on the other hand, presented a cogent and consistent defence. While he admitted to signing the cheque, he asserted that it had been misplaced and subsequently misused by the Appellant. The Trial Court found this explanation credible, particularly in light of the Respondent's consistent account of the circumstances under which the cheque could have been accessed. Importantly, under Section 139 of the NI Act, the presumption in favour of the holder can be rebutted on a preponderance of probabilities. The Respondent's defence, supported by his statements and

⁵ See *K. Prakashan v. P.K. Surenderan*, (2008) 1 SCC 258; *Sheela Sharma v. Mahendra Pal*, 2016 SCC OnLine Del 4696



the lack of evidence from the Appellant to substantiate the loan transaction, effectively rebutted the statutory presumption. In view of the evidence on record and the improbability of the complainant's version, the Trial Court's findings cannot be faulted.

8. In the opinion of the Court, the Trial Court's reliance on precedents, including *K. Prakashan v. P.K. Surenderan*⁶ and *Sheela Sharma v. Mahendra Pal*,⁷ is well-founded. These cases emphasize that in instances where the complainant claims to have extended a friendly loan without documentation, the absence of financial capacity or supporting evidence can effectively rebut the statutory presumption under Section 139 of the NI Act.

9. To conclude, counsel for the Appellant has sought to rely on the presumption under Section 139, but it is trite law that this presumption cannot operate in isolation. Taking all these factors into account including the failure to produce ITRs, lack of documentation to establish liability, the implausible explanations provided by the complainant regarding his ability to lend the loan, the Trial Court rightly concluded that the evidence presented by the Appellant was insufficient to establish the liability. Thus, the presumption under Section 139 of the NI Act stood rebutted.

10. It is a settled principle of law that if two views are possible on the basis of the evidence on record, the appellate court should not reverse a

⁶ (2008) 1 SCC 258

⁷ 2016 SCC OnLine Del 4696



judgment of acquittal merely because it prefers an alternative view.⁸ The jurisdiction of the appellate court in interfering with an acquittal is limited and should be exercised with caution, only where the judgment of the trial court is perverse or suffers from manifest illegality. Having regard to the aforementioned circumstances and the evidence on record, this Court finds no reason to interfere with the well-reasoned decision of the Trial Court.

11. Accordingly, the leave to appeal sought by the Petitioner is declined, and the petition is disposed of.

SANJEEV NARULA, J

JANUARY 16, 2025

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⁸ *K. Prakashan v. P.K. Surenderan* (2008) 1 SCC 258