



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

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Reserved on: 30th January, 2025

Pronounced on: 8th May, 2025

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CRL.L.P. 58/2021

SEEMA KHATTAR

D/o Late Sh. Prem Khattar

W/o Sh. Zabi

R/o H.No.A-211/12, Upper Ground Floor,

Jhilmil Colony, Delhi-110095

.....Petitioner

Through: Mr. Praveen Kumar Singh, Mr. C.
Sanal Nambiar, Ms. Chetna Singh and
Ms. Ishita Goel, Advocates.

Versus

DINESH KUMAR

R/o H.No.F-11, RR Block,

Naveen Shahdara,

Near Gupta Nursing Home,

Delhi-110032

.....Respondent

Through: Mr. Dishant Sharma, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.L.P. 120/2021

1. The present Criminal Leave Petition under Section 378(4) read with Section 482 Cr.P.C. has been preferred on behalf of the Petitioner against the Judgment dated 26.02.2020 passed by the Ld. M.M., whereby the



Appellant has been acquitted in the Complaint Case No. 2366 of 2016, under Section 138 Negotiable Instruments Act, 1881.

2. The Leave to Appeal is preferred on the ground that the Ld. M.M. has committed gross error in applying the correct proposition.
3. For the reasons stated in the Petition, it is allowed.
4. Registry is directed to register the Appeal and assign number to it.
5. The Leave Petition is accordingly disposed of.

CRL. A. _____/2025 (to be numbered)

6. Appeal under Section 378(2) of the Criminal Procedure Code, 1973 (*hereinafter "Cr.P.C."*) read with Section 482 has been filed by the Complainant/Appellant against the final Judgment of Ld. M.M. dated 26.02.2020 *vide* which the Accused/Respondent has been acquitted in the Complaint under Section 138 of Negotiable Instruments Act, 1881 (*hereinafter "N.I. Act"*).

7. ***Briefly stated***, the Appellant/Complainant knew accused/Dinesh through his wife namely Ritu Bala, being her friend. On the request of the Respondent in February 2015, for financial assistance of Rs. 8 lacs to tend to the financial crisis in his transport business, the Complainant gave Rs. 3,00,000/- in cash on 13.03.2015, Rs. 1,00,000/- each on 09.04.2015 and 25.05.2015, again in cash. The Accused promised to pay back the money in about a year. Therefore, the Complainant asked the Accused to repay the entire amount in about May, 2016. The Accused sought more time and handed over a cheque bearing No. 027042 of Rs. 5,00,000/- dated 16.08.2016 in favour of the Complainant.



8. The cheque on presentation was dishonoured due to insufficiency of fund *vide* Return Memo dated 19.08.2016. Despite service of Legal Notice dated 26.08.2016, the respondent failed to make the payment.
9. Consequently, Complaint under Section 138 NI Act was filed on 28.09.2016. The Notice under Section 251 Cr.P.C. was framed 01.07.2017. The Complainant examined herself in support of her case. The Respondent examined himself as well as 3 defence witnesses, in support of his defence, denying any liability under the impugned Cheque.
10. The Ld. M.M. acquitted the Accused/Respondent *vide* Judgment dated 26.02.2020 under Section 138 N.I. Act by observing that the Complaint failed to establish any legally enforceable debt towards which the impugned cheque was issued.
11. Aggrieved by the acquittal, the Petitioner has filed the present petition to challenge the judgement, on the grounds that the judgement is without any sound reason. The correct and true proposition of law relating to presumption of liability under Section 139 of N.I. Act has not been appreciated in correct perspective in so much as the burden lies on the accused to explain the circumstances in which the Cheque was issued. The Complainant had examined herself to prove the giving of money to the accused. The Complainant also proved the source of money being from her gratuity amount which she got at the time of retirement from her government service, as had also been suggested by the Accused during her cross-examination.
12. Further, there are material contradictions in the statements of the accused made at different stages of Trial. In his statement under Section 251



Cr.P.C, he had stated the cheque in question was handed over by one Gaurav Khattar to the complainant, but later in his evidence, he contradicted himself by deposing that the cheque in question was lost somewhere.

13. Ld. MM has erred in holding that the Complainant could not prove the loan transaction and consequently, the existence of valid legal debt. However, the loan transaction was duly proved and in any case, the presumption of a valid legal debt exists in case of a offence of dishonour of cheque; thus, the judgement of Acquittal is liable to be set aside.

14. ***The Ld. Counsel for the Accused/Respondent*** has submitted that the Ld. Trial Court has rightly acquitted the Respondent as there is no debt owed by the Respondent to the Petitioner. The cheque in question was lost about which he was aware and it came to his knowledge on receiving the summons of this case. Also, it does not bear his signatures.

15. Thus, it is submitted that the present Petition is without any merit and is liable to be dismissed.

16. **Submissions heard and record perused.**

17. Complaint under Section 138 NI Act has been filed in regard to dishonour of one cheque dated 16.08.2016 in the sum of Rs.5 lakhs issued by Respondent Dinesh Kumar in favour of the Complainant, which on presentation got dishonoured for “*Funds Insufficient*”.

18. The defence taken by the Respondent was that the Cheque in question did not bear his signatures as was also established from the testimony of DW4 Jaya Mishra, Assistant Manager, Indian Bank, Shahdara Branch, who produced the Account Opening Form, KYC and scanned copy of Cheque. *In her cross-examination she stated that in her opinion, there*



was a slight difference between the signatures on the Cheque in question as compared to those on the Account Opening Form.

19. *First and the foremost*, her testimony is only an opinion and she is not an Expert to depose about the authenticity of the signatures. *Secondly*, as per her testimony also there is a slight difference which can be for various reasons, but it does not lead to an inference of signatures having not been put by the respondent. *Thirdly and most importantly*, the cheque in question was not dishonoured on account of “*Signatures being Different*” but for “*Insufficiency of Funds*”. Had it been a case where signatures did not tally, the Cheque would have been dishonoured for signatures not matching and not for insufficiency of Funds. The contention of the Respondent that the cheque did not bear his signatures is, therefore, not tenable.

20. The **second contention** raised on behalf of the Respondent was that his brother-in-law Gaurav Khattar (brother of his wife) in fact, was the person who was known to the Complainant and with whom the Complainant had business deals. He claimed that he did not know the Complainant, but she was the friend of his wife Ritu Bala. It is further his defence that Gaurav Khattar at some point of time stole two cheques from his Cheque Book and may have probably given one to the Complainant, which is the subject matter of the present Complaint. He further deposed in his testimony as DW2 that he came to know about the cheque having been taken from his Cheque Book when he received summons of the present Complaint Case. He, therefore, contended that there was no legally enforceable debt in respect of which he had issued the cheque; rather the cheque had been



manipulated probably by his brother-in-law Gaurav Khattar with whom the Complainant had business dealings.

21. It is in this backdrop that the onus fell on the Complainant to prove that there existed a *legally enforceable debt*.

22. According to the averments made in the Complaint, the Respondent and his wife had contacted her in February, 2015 seeking a friendly loan of Rs.8 lakhs because of the financial crises in the Transport business which he undertook to repay within one year. She was able to collect Rs.5 lakhs which she gave to the Respondent in the presence of his wife in three instalments:

- (i) Rs.3 lakhs on 13.03.2015;
- (ii) Rs.1 lakh on 09.04.2015; and
- (iii) Rs.1 lakh on 25.05.2015.

23. The entire amount of Rs.5 lakhs was given in cash which according to her, was payable by Respondent within one year. However, after one year i.e in May, 2016 when she contacted the Respondent for repayment of the loan, he sought an additional time of 2-3 months. She acceded to his request of making payment positively in one instalment within two months, and the Respondent gave a post dated cheque of Rs.5 lakhs and assured that it would be honoured on due date.

24. The first aspect which emerges is that the friendly loan of Rs.5 lakhs has been given in cash. She herself had admitted that she knew the Respondent through his wife Ritu Bala; thereby implying that he had no direct friendship with the Respondent which makes it imperative to look with caution about this cash transaction. To explain the source of five lakhs, she in her cross-examination asserted that she had Rs.5 lakhs in her Bank



Account which she had withdrawn. She further explained that this was the amount received as Gratuity upon her retirement from the Government Service Department of PEC Ltd., Ministry of Commerce.

25. Pertinently, once an amount had been received and available in her bank account, no explanation is forthcoming as to why she resorted to giving the amounts in cash without getting any document executed to secure the loan amount. Secondly, it has been rightly observed by the learned M.M that no Bank Statement of any Account has been produced by the Complainant to corroborate her assertions that she had withdrawn this amount from her Bank Account and given to the Respondent. Furthermore, she herself had stated that she did not have the money and undertook to arrange it from various sources to be able to give Rs.5 lakhs. If this Rs.5 lakh was already present in her Account on account of Gratuity, where was the reason for her to give the amount of Rs.5 lakhs in three instalments and that too, in cash.

26. The learned M.M has further rightly observed that this amount according to the Complaint had been given in the presence of her husband and son, but pertinently neither of them has been examined by her to corroborate giving of loan of Rs.5 lakhs to the Respondent.

27. Ld. MM therefore rightly concluded that the benefit of doubt has to accrue to the accused and accordingly acquitted him of the offence under S.138 of N.I. Act.

28. There is no infirmity in the impugned judgment whereby the Respondent has been acquitted.



29. The present Appeal is accordingly dismissed and stands disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 08, 2025

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