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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.(NI) 56/2025, CRL.M.A. 6021/2025 & CRL.M.(BAIL)**
417/2025

SANJEEV SAPRA

.....Petitioner

Through: **Mr. Pankaj Kumar, Advocate**

versus

THE STATE NCT OF DELHI AND ANR

.....Respondents

Through: **Mr. Hemant Mehla, APP for the State**
with Ms. Ananya Luthra, Advocate
along with SI Arvind Kumar Saini,
PS Geeta Colony
Ms. Lavisha Kamra, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

25.02.2025

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1. The present criminal revision petition under Section 397/401 of Code of Criminal Procedure, 1973¹ is directed against the judgment dated 20th January, 2025 whereby the Sessions Court has upheld the judgment dated 11th January, 2024 and order on sentence dated 1st March 2024 passed by the Metropolitan Magistrate in CC No. 52087/2016 convicting the Petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881.² As per the order dated 1st March, 2024, the Petitioner has been sentenced to undergo simple imprisonment for a period of six months and to pay a fine of

¹ "Cr.P.C."

² "NI Act"



Rs. 8,00,000/- within 30 days, which was to be paid as compensation to the complainant. In the event of default, the Petitioner was directed to undergo simple imprisonment for a further period of four months.

2. The Petitioner has been unsuccessful in appeal before the Sessions Court, has now invoked the revisional jurisdiction of this Court impugning the afore-said orders.

3. The brief facts of the case are as follows:

3.1 Respondent No. 2 (the Complainant) initiated proceedings under Section 138 of the NI Act alleging that he had extended a friendly loan of ₹4,00,000/- to the Petitioner, with an understanding that the amount would be repaid within five to six months. To formalize this transaction, the Petitioner executed a promissory note-cum-receipt in the presence of a witness.

3.2 In discharge of the said debt, the Petitioner allegedly issued cheque No. 685229 dated 10th June, 2014, drawn on United Bank of India, Gandhi Nagar, for an amount of ₹4,00,000/-. Upon presentation, the cheque was dishonoured due to insufficient funds. The Complainant, thereafter, issued a legal demand notice, calling upon the Petitioner to pay the cheque amount. Since the Petitioner failed to comply, a criminal complaint (CC No. 52087/2016) was filed under Section 138 of the NI Act.

3.3 The Petitioner was served with notice under Section 251 of the Code of Criminal Procedure, 1973 on 8th August, 2019. He pleaded not guilty and claimed trial. During trial, the Complainant testified as CW-1 reiterating the facts of the complaint. To substantiate his claim, he proved the promissory note (Ex. CW1/1), dishonoured cheque (Ex. CW1/2), returning memo (Ex. CW1/3), legal notice (Ex. CW1/4), postal receipt (Ex. CW1/5) and Income



Tax Return for the assessment years 2014-2015 to 2016-2017 which was exhibited as Ex. CW1/6 (colly).

3.4 The said witness was cross-examined in detail by the defence.

3.5 After closure of the Complainant's evidence, the statement of the Petitioner (Accused) was recorded under Section 313 CrPC. He denied having executed the promissory note (Ex. CW1/1), alleging that it was forged. However, he admitted his signature on the cheque, while contending that the cheque particulars were not filled by him. He further asserted that the cheque was issued as security for a committee run by Dharmendra Sachdeva and Harjeet Singh and was subsequently misused by the Complainant in collusion with others. The Petitioner also denied receiving the legal notice prior to the complaint. He placed reliance on FIR No. 0264/2015, P.S. Geeta Colony (Mark CW1/D1) but did not lead any defence evidence in support of his contentions.

3.6. Upon examining the material on record, the Metropolitan Magistrate concluded that the essential ingredients of Section 138 of the NI Act stood satisfied, including the existence of a legally enforceable debt/liability, dishonour of the cheque, and failure to make payment despite receipt of statutory notice. The Court held that the presumption under Section 139 of the NI Act operated in favour of the Complainant, and the Petitioner had failed to rebut the same by leading cogent evidence. Accordingly, the Trial Court convicted the Petitioner under Section 138 of the NI Act.

4. In appeal, the said order was upheld by the Session Court for the following reasons:

"18. The accused at the time of framing of notice and thereafter in his statement U/s 313 Cr.P.C denied the receipt of the legal notice. However, accused has not denied the contents of the legal demand notice. It is



noteworthy to mention here that the address mentioned on the legal notice and the address on promissory note as well as court notice issued by the Ld. Trial Court and bail bond furnished before the Ld. Trial Court by the accused, is same. The evidence of the accused that he did not receive the legal demand notice is without any substance. It is admitted fact that he did not make any payment within 15 days of the legal demand notice. The Hon'ble Supreme Court in "CC Alavi Haji v. Palapetty Mulzammaoj 2007(6) SCC 555" held that the true intent behind the service of legal demand notice is to be seen as a precursor to launch of prosecution against the Accused and that is providing ample opportunity to the Accused to repay the cheque amount and avoid the legal proceedings against him. The Service of summons upon the Accused fulfills the said purpose and provides ample opportunity to the Accused to pay the amount in dispute. Any Accused who fails to pay the said amount within 15 days of service of summons cannot hide behind this technical plea of non-service of legal demand notice, to evade his liability. The reasoning as provided by the Ld. Trial Court that the address that has been mentioned in the legal notice and the address on accepted bills of the accused are same, the mandatory statutory legal notice is deemed to have been served on the accused in the present case, cannot be faulted and hence no interference is warranted on the said finding as the same is based upon established principles of law occupying this field.

19. Further in view of the settled law even if the service of legal notice has not been proved, the service of notice of complaint also amounts to sufficient compliance of notice u/s 138 NI Act and in case the accused failed to pay the cheque amount despite service of notice of complaint, he is guilty of offence u/s 138 NI Act. In this regard, this court is supported by the recent case law reported as Balak Ram vs Ashok Kumar Nagar, CRL. A. 897/2017. Relevant para of the judgment reads as under:-

"5. Further, as held by the Supreme Court in the decision reported as (2007) 6 SCC 555 C.C. Alavi Haji vs. Palapetty Muhammed & Anr. the Supreme Court reverting to Provisos (b) & (c) to Section 138 NI Act held that the course open to the drawer where he claims that he has not received the notice sent by post but received copy of the complaint with the summons is that he can within 15 days of the receipt of summons make payment of the cheque amount and on that basis submit to the Court that the complaint be rejected. On service of summons in the complaint he cannot contend that there was no proper service of notice."

20. Hence, all the ingredients i.e. issuance of cheque, dishonor of cheque, notice to drawer and failure to make payment stand satisfied and therefore the presumption 139 and 118 of NI Act automatically becomes operative in this case i.e. that the cheques were issued in discharge of a legally enforceable debt.



21. Therefore, the combined implication of both Section 138 and 139 NI Act is that once the essential ingredients of Section 138 are satisfied and the presumption under Section 139 is pressed into service then the case against of the Complainant against the Respondent stands proved that the negotiable instrument was issued in discharge of a legally enforceable debt and now it is up to him to rebut the presumption drawn against him by leading evidence to the Contrary. The burden which the Accused has to discharge in rebutting the said presumption is “preponderance of probabilities” while the Complainant has to prove his case beyond reasonable doubt. Therefore, what has been envisaged is that the Accused should raise a probable defence which is an expression i.e. different from possible defence. In “Kumar Exports v Sharma Carpets; (2009) 2 SCC 513”; it was held that mere denial of existence of debt will not serve any purpose but accused may adduce evidence to rebut the presumption. This Court held as under:-

“20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. 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 non-existence 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. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he



had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act ”

22. Therefore, in order to travel from the point of possible defence to probable defence, the Accused has to have some credible material on record so as to raise a doubt on the version of the Complainant. 23. With the above factual and legal background in mind, the task cut out for this court is to undertake an independent analysis of evidence on record to determine that whether the accused has successfully rebutted the said presumption by demonstrating the inconsistency/untrustworthiness in the testimony of the Prosecution witnesses or by successfully proving his own defence by his defence evidence. 24. The first leg of discussion is the independent analysis of other evidence and relevant facts so as to come to a conclusion whether the Respondent has in fact produced sufficient material before the consideration of this court to prove his case beyond reasonable doubt and whether the Appellant has been able to successfully rebut the same.

25. The Appellant at the time of framing of notice stated in his plea of defence that the cheques in question were issued as security cheques to Dharmender Sachdeva and Harjeet Singh. It is trite law that once the presumption under Section 139 r/w Section 118 NI Act kicks in then the case against the accused stands proved and from that point on it is his responsibility to prove his defence on the touchstone of preponderance of probabilities. Now, the ground that the cheque in question was not issued towards satisfaction of any existing debt but merely as a security cheque which has been misused by the complainant, is a fact that has been put forth by the Appellant during the trial. In this connection, Section 103 of the Indian Evidence Act is worth mentioning which holds as under:

“103. Burden of proof as to particular fact. —The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. ”

26. Hence, the onus to prove this fact was upon the Appellant. The first argument which has been advanced by the appellant is that the signatures on the promissory note are forged and fabricated. In relation to that, it is observed in the notice U/s 251 Cr.P.C, the appellant has clearly mentioned that cheque in question has his signature, therefore, the signature on cheque in question is admitted. The fact that the signatures on the promissory note are forged and fabricated, is a fact



which has been alleged by the appellant and hence, ought to have been proved by him. The same could be done by adducing any defence evidence or handwriting expert but the same has not been done by the appellant and no handwriting expert has been examined in his defence evidence. Rather no defence evidence has been led by the appellant. In any case, the Court U/s 73 of Indian Evidence Act has power to compare the signature. Section 73 of Indian Evidence Act reads as under:-

73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

27. The Ld. Trial Court has come to a conclusion that the signature on promissory note, prima facie, appears belonging to the accused/appellant. This Court agrees with the findings of the Ld. Trial Court. In any case, the promissory note is only corroborative piece of evidence and only supplements the case of the respondent. The only bald argument that the signatures on the promissory note are forged and fabricated does not help the case of the appellant in any way in rebutting the presumption raised against him.

28. In the notice U/s 251 Cr.P.C framed against the accused, the accused in his plea of defence stated that he had given blank signed cheque to one Dharmender Sachdeva for the purpose of committee and that he did not give any cheque to the complainant. As per case of the complainant/respondent, a friendly loan of Rs. 4 lakhs was advanced to the appellant which carried interest @ 12% per annum. The complainant/respondent stated in his evidence that although he has not filed ITR for the last 4-5 years but he has filed ITR at the advancement of loan and the said loan is shown in the ITR i.e placed as annexure CW1/6 colly. The ITR pertains to Assessment Year 2014-2015, 2015-2016 and 2016-2017. The balancesheet clearly mentions under heading loan and advances, loan advanced to Sanjeev Sapra of Rs.4 lakhs. The complainant further stated in his evidence that the said friendly loan advanced in front of Jatin Mehndiratta who is also a shopkeeper in the market. He further submitted that he took signatures of said Jatin as a witness on the promissory note which is Ex.CW1/1 and the signatures of



Jatin are at point 'X'. In relation to the same, it is observed that the argument of the appellant that the said witness to the promissory note i.e. Jatin has not been examined as a witness, does not hold much water as under these proceedings which are under NI Act, once the respondent/complainant has proved the essential ingredients of section 138 of NI Act, the presumption U/s 139 of NI Act automatically kicks off and there exists reverse onus on the appellant to prove his case. Therefore, it is his responsibility to prove that said person named Jatin did not sign the promissory note. The same could have been done by calling said Jatin to the witness box by the appellant by -leading defence evidence but same has not been done. The perusal of the promissory note itself clearly shows the signature of Jatin on the promissory note and it is the appellant who has disputed this fact that firstly Jatin did not sign it as a witness and secondly he has not been examined. As per section 103 of Indian Evidence Act, the fact that signatures of Jatin are forged, is the fact which is alleged by the appellant and hence it was his responsibility to prove the same.

29. The said onus which was on the appellant has clearly not been discharged by the appellant. Secondly, the argument of the appellant that the cheques of the same series from 685221 to 685240 were given to Dharmender Sachdeva Harjeet Singh and the cheque No.685229 i.e. the cheque in question has been misused by the respondent/complainant, is also a fact, the burden of proving the same was upon the appellant. Same could have been done by calling a witness who was privy to the said fact to the witness box or by adducing some other evidence which could have been proved that the said cheques were, in fact, given to Dharmender Sachdeva for the purpose of committee. The accused/appellant has not led any such evidence. He has, in fact, not led any defence evidence. He has also not produced copy of cheque book or any document related to the committee which was being run by said Dharmender Sachdeva etc. In other words, apart from bald allegations and assertions, nothing material has been placed on record so as to prove the fact that the security cheques which were allegedly given to Dharmender Sachdeva, has been misplaced by the respondent/complainant.

30. It is further noteworthy to mention that an argument has been advanced by the appellant that the alleged loan cannot be treated as friendly loan because of the fact that the promissory note itself mentions interest @ 12% per anum. In relation to that, it is observed that the appellant himself relies on the promissory note and rate of interest mentions therein so as to put forth that friendly loan was given and on the other hand disputes the promissory note altogether. It is further observed that there is no legal bar that interest can not be charged on the friendly loan.

31. The appellant has also raised an argument regarding the lacking of financial capacity of the respondent/complainant to advance loan. In this



regard, it is observed that firstly the financial capacity is to be disputed at the earliest possible stage i.e. in reply to the legal notice. Even at the time of framing of notice U/s 251 Cr.P.C., the said plea of the defence has not been taken. Secondly, there is no cross examination in this direction so as to prove that the respondent lacking the financial capacity to advance loan. Lastly, the respondent has produced his income tax returns which shows that his gross total income during the Assessment Year 2014-15, 2015-16 and 2016-17, was about Rs.3.50 lakhs per year. Therefore, considering all these factors, the argument of the appellant that the respondent/complainant was lacking financial capacity, does not hold much water.

32. Further, it is observed that once the ingredients as mentioned in section 138 of NI Act are satisfied and the statutory presumption kicks in, the complainant need not show that he had the financial capacity in the first instance. Defence regarding the financial capacity of the complainant has to be taken at the earliest possible opportunity i.e. when the reply to the statutory notice sent. Thereafter based upon the case to lead positive evidence by producing independent materials i.e. examining his witness and producing his documents to show lack of financial capacity of the complainant to advance loan. It is held in the judgement of *Tedhi Singh vs Narayan Dass Mahant* Crl. A. NO.362 Of 2022:

33. “9. The Trial Court and the First Appellate Court have noted that in the case under Section 138 of the N.I. Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the N.I. Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent the Courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly achieve this result through the cross examination of the witnesses of the complainant. Ultimately, it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the



complainant is in peril for the reason that the accused has established a probable defence. ”

34. *The penultimate argument of the appellant is that the ITR CA No. does not have name and signature of the Chartered Accountant (CA). In relation to this, it is observed that it is not necessary to file ITR through CA. The ITRs cannot be held to be inadmissible only because the stamp of CA is not present. In any case, the ITRs are computer generated govt. Document against which a presumption exists with relation to their legitimacy unless proved otherwise. Apart from assertion that the ITRs filed by the respondent do not bear any stamp or signature of CA, no evidence whatsoever has been produced by the appellant so as to prove that the said ITRs are not correct and are forged and therefore, this argument of the appellant is also rejected. The appellant further argued that the ITR did not mention the loan advanced by the respondent to the appellant. Although the same does not appear to be the case as it has already been discussed above that loan of Sanjeev Sapra of Rs.4 lakhs has already been reflected in the balance sheet. In any case, non-mention of the loan in the ITR is not sufficient to rebut the presumption U/s 139 of NI Act. It has been held by Hon'ble High Court in **Crl. L.P 567/2014 titled Lekh Raj Sharma versus Yash Pal Gupta** that the complaint u/s 138 of N.I Act is maintainable even where the transaction is not shown in the income tax return.*

35. *The last argument of the appellant is that the cheque was given to one Dharmender Sachdeva and since the said cheque was misused by the respondent/complainant, an FIR No.0264/2015 i.e. placed as Ex.CWI/D1 was registered against Dharmender Sachdeva and Harjeet Singh as well as respondent in PS Geeta Colony. The perusal of the said FIR bring to the fore the fact that the said FIR pertains to Dharmender Sachdeva but a complaint case No.101/2015 was filed against the respondent by the appellant and the said complaint was attached with the FIR No.0264/2015 PS Geeta Colony as the directions were given that the said complaint is to be attached with the case FIR No. 0264/2015 when the chargesheet is filed. Therefore, the submission of the appellant that the FIR was lodged against the respondent appears to be misplaced. Be that as it may, the lodging of FIR or filing of complaint case is not, in any way, sufficient to rebut the presumption raised against the appellant in the proceedings U/s 138 of NI Act.*

36. *In the light of above discussion and upon independent appreciation of evidence in the instant matter, as has been mandated while examining the Appeal against Conviction U/s Section 374(3) CRPC, this Court is of the considered opinion that the judgment of the Ld. Trial Court is based upon sound reasoning and analysis of all the material on record. The reasoning of the Ld. Trial Court cannot be faulted and no perversity can be found in the impugned judgment so as to warrant interference in the same. Accordingly present appeal stands dismissed.*



*37. TCR be sent back along with copy of this order.
38. Appeal files be consigned to the Record Room after due compliance.
Signed copy of this judgment be placed along with both appeal case files.”*

5. The Petitioner assails the findings of both the Trial Court and the Appellate Court on the following grounds:

5.1 The findings of both Courts are perverse and contrary to settled legal principles as laid down by the Supreme Court. The Courts failed to properly evaluate the evidence on record and arrived at conclusions unsupported by law.

5.2 The Courts overlooked crucial procedural irregularities. Specifically, the alleged legal notice was dated 27th June, 2014, but the postal receipts indicate that it was actually posted on 28th June, 2014, and again on 14th July, 2014. This discrepancy raises serious doubts regarding the timeline and authenticity of service of notice—a mandatory requirement under Section 138(b) of the NI Act. The Complainant has failed to provide any explanation as to why a second notice was sent on 14th July, 2014, when the first notice was allegedly served on 28th June, 2014. The Courts below failed to appreciate these inconsistencies, which rendered the complaint, non-maintainable.

5.3 The complaint was filed on 19th July, 2014, and the Metropolitan Magistrate took cognizance on 24th July, 2014, in a mechanical manner, without applying judicial mind to the procedural lapses concerning service of notice, as mandated under Section 138(c) of the NI Act. The absence of a clear finding on valid service of notice vitiates the entire proceedings.

5.4 The Complainant alleges that the amount advanced was a friendly loan; however, he simultaneously relies upon a promissory note (Ex.



CW1/1), which explicitly mentions an interest rate of 12% per annum. This contradiction raises serious doubts regarding the nature of the transaction, as a friendly loan is usually not accompanied by a fixed interest rate. The Courts failed to scrutinize this contradiction, thereby overlooking a material aspect affecting the enforceability of the alleged debt.

5.5 At the stage of service of notice under Section 251 Cr.P.C., the Petitioner categorically stated that no legal notice was ever served at his then-current residential address. Despite this specific contention, the Trial Court failed to conduct any inquiry into the validity of service, which is a mandatory prerequisite for proceedings under Section 138 of the NI Act. The Courts below thus erred in assuming due compliance with the statutory requirement.

5.6 The cheque in question was never handed over to the Complainant in discharge of any legally enforceable debt or liability. Rather, it was given as a security cheque to one Dharmendra Sachdeva for a committee transaction. The cheque was subsequently misused by the Complainant, in collusion with other individuals, to initiate false proceedings. The Courts below failed to appreciate that a security cheque, without an established underlying liability, does not attract penal consequences under Section 138 of the NI Act.

5.7. On a complaint dated 20th August 2014, against Dharmendra Sachdeva and others, an FIR No. 264/2015, was registered. This FIR clearly alleged that the Petitioner was cheated and that the cheque in question was unlawfully used. Additionally, the Petitioner also filed Complaint Case No. 54179/2016, which was subsequently consolidated with FIR No. 264/2015. These pending complaints substantiate the Petitioner's defence that the cheque was misused, and directly contradict the Complainant's version of



events. The Trial Court, however, ignored these crucial pieces of evidence, which cast serious doubt on the prosecution's case.

5.8 The Courts below failed to take note of the fact that Exhibit CW1/1 (the promissory note) was allegedly executed in the presence of a witness named Jatin, who purportedly penned its contents. However, despite the critical role of Jatin in the alleged execution of the document, the Complainant never produced him as a witness. This omission raises serious doubts about the authenticity of the promissory note and weakens the prosecution's case, as the only independent person who could have corroborated the transaction was not examined. Moreover, failure to examine Jatin is particularly significant in light of the Petitioner's defence that the cheque in question was never issued to the Complainant, but was given to Dharmendra Sachdeva as security for a committee transaction. The non-examination of a key witness who was allegedly present at the time of execution of the promissory note creates a serious lacuna in the prosecution's case, which ought to have been considered by the Courts below.

6. The Court has carefully examined the contentions raised but finds no merit in the present revision petition.

7. At the outset, the Court must emphasize that the scope of interference in revisional jurisdiction is extremely limited. This Court does not sit as a second appellate court to reappraise evidence or reassess findings of fact. Unless the impugned judgment suffers from manifest illegality, gross perversity, or results in a miscarriage of justice, interference is unwarranted. Revisional jurisdiction is meant to correct jurisdictional errors or procedural irregularities that have led to injustice—not to act as a forum for re-



evaluating evidence already considered by the Trial Court and affirmed by the Appellate Court.³

8. The Petitioner disputes the receipt of the legal demand notice. However, the Appellate Court has rightly noted that the address mentioned in the legal notice, promissory note, court notice, and bail bond is identical. This contradicts the Petitioner's claim of non-service. Moreover, the Appellate Court correctly relied on settled legal principles laid down by the Supreme Court, which establish that the purpose of a legal demand notice, under Section 138 of the NI Act, is to afford the drawer an opportunity to make payment and avoid prosecution. Once the summons was duly served, and the Petitioner failed to discharge the liability within the statutory period of 15 days, the defence of non-service is rendered inconsequential. This Court finds no infirmity in the said reasoning.

9. The Petitioner has sought to challenge the promissory note, arguing that he never executed the document and that his signature on it was forged. He further contends that the Complainant failed to examine Jatin, the alleged scribe of the promissory note, and provided vague responses regarding its preparation date. Additionally, it is argued that the mention of an interest rate of 12% contradicts the Complainant's claim that the transaction was a friendly loan, thereby casting doubt on the authenticity of the promissory note.

10. This Court is not persuaded by the afore-noted objections raised by the Petitioner. The presumption under Section 139 of the Negotiable Instruments Act, 1881, is clear and unequivocal—the issuance of a cheque

³ *State of Kerala V Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452; Also see: *Amit Kapoor V. Ramesh Chander*, (2012) 9 SCC 460



carries a statutory presumption that it was drawn in discharge of a legally enforceable debt or liability. This presumption is undoubtedly rebuttable, but the burden to displace it lies squarely on the accused. A mere denial of execution or a bald assertion that the cheque was misused does not suffice to rebut the presumption. The Supreme Court, in ***Rangappa v. Sri Mohan***⁴ has categorically held that once the execution of the cheque is admitted, the presumption under Section 139 automatically applies, and it is for the accused to establish a credible defence.

11. Before the Trial Court, all the essential ingredients of an offence under Section 138 of the NI Act stood fully satisfied which includes, the issuance of the cheque by the Petitioner, its dishonour upon presentation, the service of a legal demand notice, and the failure to make the requisite payment within the statutory period. As a result, the presumption under Sections 118(a) and 139 of the NI Act is triggered, establishing a legal fiction that the cheque was issued in discharge of a legally enforceable debt or liability.

12. It is now well recognized that in proceedings under Section 138 of the NI Act, the accused has two possible avenues to rebut the presumption—either to prove that no consideration or debt existed, or to demonstrate that, in the specific facts of the case, the non-existence of such liability is so probable that a prudent person would be compelled to conclude that no debt ever arose. However, the standard for rebuttal is not proof beyond reasonable doubt, as required in a criminal trial, but on the scale of preponderance of probabilities. The accused may discharge this burden either by leading direct evidence or by relying on the material already on

⁴ (2010) 11 SCC 441



record.

13. The Petitioner has admitted his signature on the cheque but claims that the particulars therein were not filled by him. However, the Petitioner has not led any evidence, such as a handwriting expert's opinion, to substantiate his claim that the promissory note was forged. Nor has he produced any material to demonstrate that the cheque was issued for a purpose other than the discharge of liability. The mere fact that the Complainant did not examine the scribe of the promissory note does not, in itself, discredit the document, particularly when no effort was made by the Petitioner to summon the witness in his defence. The reliance placed on the alleged discrepancies regarding interest is also misplaced, as the case pertains to the dishonour of a cheque, and the amount sought under Section 138 of the NI Act is limited to the cheque amount itself, without reference to any interest component.

14. Furthermore, merely suggesting that the Complainant lacked the financial capacity to extend the alleged loan does not suffice. The burden was on the Petitioner to substantiate this plea through cogent and convincing evidence. However, no material has been placed on record to support this claim. It is settled position of law that a bald denial or vague allegations, without substantive proof, are insufficient to displace the statutory presumption.⁵ Since the Petitioner has not discharged this burden even on a balance of probabilities, the presumption in favour of the Complainant remains valid and unrebutted.

15. Another crucial aspect that undermines the Petitioner's defence is his failure to offer a credible explanation as to how the Complainant came into



possession of the cheque. The Petitioner's claim that the cheque was handed over to Dharmendra Sachdeva and Harjeet Singh as a security instrument for a committee remains wholly unsubstantiated. The Petitioner has also failed to summon any witnesses—whether Dharmendra Sachdeva, Harjeet Singh, or any other individual—to substantiate his claim regarding the existence of the alleged committee. If indeed the cheque had been issued as security for a financial arrangement with these individuals, nothing prevented the Petitioner from adducing independent evidence to establish this fact. The complete absence of any supporting material, whether in the form of contemporaneous documentation or oral testimony, renders the Petitioner's defence speculative at best. Furthermore, the FIR placed on record, which purportedly supports the Petitioner's claim, was lodged after the institution of the present complaint under Section 138 of the NI Act. Such an afterthought does little to inspire confidence and, instead, raises serious doubts about the veracity of the defence. Thus, mere allegations or bald denials are insufficient to dislodge the statutory presumption under Section 139 of the NI Act unless backed by cogent evidence.

16. The Petitioner also contends that the Complainant's failure to disclose the loan transaction in his Income Tax Returns (ITRs) casts doubt on the legitimacy of the alleged debt. However, this argument is entirely misplaced. The Trial court and the Appellate court notes that the loan amount was in fact reflected in the balance sheet. Furthermore, while the Petitioner asserts that the loan amount does not specifically feature in the ITRs, this by itself does not negate the existence of a legally enforceable debt. Here, the Complainant has successfully placed on record Ex. CW1/1, which

⁵ *V. S Yadav v Reena*, 2010: DHC :683



sufficiently establishes the existence of the loan transaction.

17. The Petitioner further seeks to challenge the financial capacity of the Complainant, alleging that he was not in a position to advance the loan. This argument is equally devoid of merit. First, the question of financial capacity should have been raised at the earliest opportunity—either in response to the legal demand notice or at the stage of framing of notice under Section 251 CrPC. However, no such plea was taken by the Petitioner at the relevant time. Second, there was no cross-examination of the Complainant on this aspect, thereby leaving the defence untested. Third, the Complainant has produced his ITRs for the relevant assessment years, demonstrating an annual gross income of approximately Rs. 3.5 lakhs, which is not incompatible with the ability to extend a friendly loan of Rs. 4 lakhs.

18. As reiterated in *Basalingappa v. Mudibasappa*,⁶ the burden of proof on the accused, though lighter than that on the prosecution in a criminal trial, still requires a plausible and probable defence backed by evidence. The law does not require the Complainant to prove the existence of the underlying debt beyond a reasonable doubt; rather, it is for the accused to establish a probable defence that displaces the statutory presumption. Here, the Petitioner has failed to discharge even this minimal burden. In the absence of any credible evidence from the Petitioner to do so, this Court finds no infirmity in the concurrent findings of the Trial Court and the Appellate Court holding him guilty of the offence under Section 138 of the NI Act.

19. In light of the foregoing, the Court finds no infirmity in the Impugned orders to warrant interference in the revisional jurisdiction.

20. In view of the above, the present petition is disposed of along with



pending applications.

SANJEEV NARULA, J

FEBRUARY 25, 2025/ab

⁶ (2019) 5 SCC 418

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