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

\+ CRL.L.P. 167/2025 & CRL.M.A. 7217/2025, CRL.M.A. 7218/2025

SUSHMA SRIVASTAVA .....Appellant

Through: *Appearance not given.*

versus

STATE THROUGH SHO & ANR. .....Respondents

Through: Mr. Satinder Singh Bawa, APP.
SI Suresh Bhatia, PS: Timarpur.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **06.03.2025**

1. The present petition under Section 419(4) of the Bharatiya Nagarik Suraksha Sanhita 2023 (formerly Section 378(4) of the Code of Criminal Procedure, 1973) seeks leave to appeal against judgment dated 08th July, 2024, passed by the Judicial Magistrate First Class: NI Act-03 (Central), Tis Hazari Courts, Delhi, dismissing the Appellant's complaint under section 138 NI Act bearing CT Case No. 535169/2016 titled *"**Sushma Srivastava v. Simran Singh**"*.

Factual Background

2. The relevant facts leading to the present proceedings, as narrated in the petition, are as follows:

2.1 The Appellant filed a complaint against Respondent No. 2 under Section 138 of the Negotiable Instruments Act, 1881[1], alleging that

[1] "NI Act"

Respondent No. 2, a friend of the Appellant, had approached her in September 2014 seeking a friendly loan of ₹5.5 lakh, citing urgent financial need and assuring repayment within six months. Relying on this assurance, the Appellant extended a loan of ₹4 lakh in cash and an additional ₹1.5 lakh through cheque No. 746491 dated 17th September, 2014.

2.2 In the first week of April 2015, Respondent No. 2 issued two post-dated cheques in favour of the Appellant towards repayment of the loan– cheque No. 974175 dated 20th April, 2015 for ₹2 lakh and cheque No. 974174 dated 21st April, 2015 for ₹3.50 lakh, both drawn on HDFC Bank.

2.3 At the time of issuing these cheques, Respondent No. 2 had allegedly assured the Appellant that they would be cleared upon presentation. However, both these cheques were dishonoured with the remarks 'Alteration require drawer authentication' and 'Payment stopped by drawer.'

2.4 The Appellant immediately informed Respondent No. 2 about the dishonour, but no payment was made. Consequently, the Appellant issued a legal notice dated 5th May, 2015, demanding payment of the amounts covered by the dishonoured cheques. Despite receipt of the notice, Respondent No. 2 failed to comply, leading the Appellant to initiate proceedings under Section 138 of the NI Act.

2.5 Following the summoning of Respondent No. 2, a notice under Section 251 CrPC was served on 25th July, 2017, wherein Respondent No. 2 presented her defence, which was duly recorded.

2.6 In support of her case, the Complainant examined herself as CW-1, and the Deputy Manager of HDFC Bank, Patel Nagar, New Delhi as CW-2. The statement of Respondent No. 2 was also recorded under Section 313 CrPC. In her defence, Respondent No. 2 examined herself as DW-1 and one

Mr. Arvind Kumar as DW-2.

2.7 Upon consideration of the evidence and arguments advanced, the Trial Court rendered the impugned judgment, dismissing the complaint and acquitting Respondent No. 2.

Appellant's Case

3. The Appellant assails the impugned judgment on the following grounds:

3.1 The impugned order is based on conjecture and lacks cogent reasoning. The Trial Court's findings are speculative, and contrary to established legal principles.

3.2 The Appellant has duly proved all the essential ingredients required to establish an offence under Section 138 of the NI Act. The cheques in question were drawn from Respondent No. 2's account and issued in discharge of an admitted debt. Despite receiving a legal notice, Respondent No. 2 failed to make the requisite payment, thereby attracting liability under the NI Act.

3.3 The statutory presumption under Section 139 of the NI Act, which mandates that cheques are presumed to have been issued in discharge of a legally enforceable debt, was clearly applicable in this case. Respondent No. 2 not only failed to rebut this presumption but, in fact, admitted to issuing the cheques and signing them.

3.4 Respondent No. 2 presented inconsistent and contradictory defences. Initially, in her statement under Section 251 CrPC, she outrightly denied taking any loan from the Appellant. However, she later conceded to making a partial repayment of ₹1.50 lakh– claiming to have paid ₹50,000/- to the Appellant's husband and ₹1 lakh to the Appellant herself.

3.5 The Trial Court erred in relying on the bank statement of the Appellant's husband to support Respondent No. 2's claim of repayment. Not only did this document fail to corroborate the alleged repayment of ₹50,000/-, but the actual payments made by Respondent No. 2 amounted to only ₹46,000/- and were entirely unrelated to the loan. These payments were made as reimbursement for personal assistance extended to her by the Appellant's husband, not towards the discharge of the loan.

3.6 During cross-examination, Respondent No. 2 contradicted her earlier assertion, admitting that no payment of ₹50,000/- was ever made to the Appellant's husband.

3.7 The Trial Court also failed to appreciate that the defence presented by Respondent No. 2, claiming to have repaid the sum of INR 1 lakh in cash, was not substantiated by the following facts:

(i) In her statement under Section 251 CrPC, her reply to the legal notice, and the complaint that she allegedly lodged against the Appellant, Respondent No. 2 consistently stated that she had personally paid ₹1 lakh in cash to the Appellant. However, she later changed her stance, claiming that the amount was paid through one Arvind Kumar, a person not mentioned in any of her prior statements.

(ii) Respondent No. 2 failed to provide any documentary proof of the alleged ₹1 lakh payment made on 10th April, 2015. Even during cross-examination, when specifically asked to produce a statement of account reflecting a loan of ₹1 lakh from her employer (which she claimed was the source of the repayment), she initially asserted that she could provide it, but ultimately failed to do so.

(iii) The testimony of DW-2 did not support Respondent No. 2's defence, and the defences presented by both DW-1 and DW-2 were entirely inconsistent and failed to establish any defence.

(iv) DW-2 did not stand by his own statement, and his cross-examination contradicted Respondent No. 2's defence. He failed to recall the exact date when the alleged payment was made at the Appellant's office, and could not even specify the denominations of the currency notes allegedly handed over to the Appellant.

Analysis

4. The Court has considered the aforenoted contentions and perused the impugned order. This case arises under Section 138 of the NI Act, where statutory presumptions operate in favour of the cheque holder. Under Section 118(a) of the Act, once the execution of the cheque is admitted, a presumption arises that the cheque was issued for consideration. Additionally, Section 139 strengthens this presumption by deeming that the cheque was received in discharge, either wholly or partially, of a debt or liability. These provisions collectively shift the burden onto the accused to rebut the presumption of a legally enforceable liability.

5. However, the Supreme Court has consistently held that the standard for establishing such a probable defence is based on a preponderance of probabilities.[2] This means that the accused does not need to conclusively prove their defence, but must demonstrate that their version is reasonably probable, thereby shifting the burden back to the complainant.

6. 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 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. The accused may discharge this burden either by leading direct evidence or by relying on the material already on record.[3]

7. A perusal of the impugned order in light of the aforementioned legal principles demonstrates that the Trial Court has thoroughly examined the evidence, and appropriately applied the well-established legal principles set forth by the Supreme Court. In fact, the Trial Court duly acknowledged that the presumptions stood attracted in favour of Appellant. Accordingly, upon reaching this conclusion, the Trial Court proceeded to assess whether the presumption in favour of the Appellant was rebutted by Respondent No. 2, based on the principles of preponderance of probabilities. In this regard, it is pertinent to highlight the following observations made in the impugned judgment:

> *"15. The case of the complainant is that the accused took a loan of Rs. 5,50,000/- from her and thereafter, issued the cheques in question to return the loan amount, which subsequently got dishonored upon presentation. During the course of trial, the accused has admitted her signatures over the cheque in question and as discussed previously, the legal presumption u/s 118 (a) /139 of the NI Act are attracted to the present case. Once Section 139 of the Negotiable Instruments Act comes into picture, the Court presumes that the cheque was issued in discharge, in whole or in part, of any debt or liability. At this stage, with the help of presumption under Section 139 of the Negotiable Instruments Act, the case of the complainant stands proved.* ***<u>The Court, at this stage, is completely in concurrence with the judgments relied upon by Ld. Counsel for complainant on the point of presumption.</u>***

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[2] Basalingappa v. Mudibasappa, (2019) 5 SCC 418.
[3] Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148.

16. xx … xx … xx
17. xx … xx … xx
18. To sum up the above mentioned judgment, 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. However, at the same time, it is also to be remembered that bare denial of the existence of legally enforceable debt or other liability cannot be said to be sufficient to rebut the presumption and something which is probable has to be brought on record to shift the burden back to the complainant. Keeping these basic principles in mind, this Court shall now proceed to deal with the defence taken by the accused and examine whether the accused has been able to rebut the presumption arising in favour of the complainant.
19. In her complaint, the complainant has stated that loan of Rs. 5,50,000/- was advanced to the accused wherein Rs. 1,50,000/- was advanced through cheque and Rs. 4,00,000/- was advanced in cash. The accused, during trial, admitted taking loan of Rs. 1,50,000/- from the accused but stated that the loan amount has been returned to the accused wherein Rs. 50,000/- has been returned through account transfer and Rs. 1,00,000/- was returned in cash by one Mr. Arvind Kumar. Accused categorically denied advancement of cash loan of Rs. 4,00,000/-. The accused has maintained a consistent defence wherein she has stated that the cheques in question including four other blank signed cheques were given by her to the complainant as the latter had assured her that she would be able to help her with procurement of a loan and were not issued against any legally enforceable debt or liability.
20. In the opinion of this Court, the accused has been able to raise reasonable doubts on the version of the complainant which the complainant has not been able to prove beyond reasonable doubts for the following reasons. Firstly, there are inconsistencies in the testimony of the complainant. The accused has admitted taking of loan of Rs. 1,50,000/- from the complainant through cheque. The accused has stated that at the instance of the complainant, the amount was partially repaid to the bank account of her husband and partially in cash to her at her office. During her cross-examination on 12.12.2018, the complainant categorically denied any payment being made by the accused to the bank account of her husband but on 17.01.2019, bank account statement of her husband Ex. CW1/D1 was produced by her wherein she was confronted with entries as mentioned at point-A, B and C of the given document. Thereafter, the complainant admitted transfer of

Rs. 46,000/- by the accused to the bank account of her husband as indicated at the entries as aforementioned. She, however, stated that the payments were unrelated to the transaction in question but no evidence to prove this was led by her. In fact, even her husband was not examined as a witness by the complainant to prove that the admitted payments in Ex. CW1/D1 were not related to the loan advanced by the complainant to the accused. Moreover, nothing regarding any separate monetary transaction between the accused and the husband of the complainant was mentioned by the complainant in her complaint or evidence by way of affidavit Ex. CW1/A and there was categorical denial of any payments by the accused to the bank account of her husband until the bank account statement of husband of complainant was brought on record. It raises reasonable doubt on version of the complainant wherein there was no whisper of any separate monetary transaction along with initial denial of receipt of any amount and gives credibility to the consistent defence maintained by the accused. The complainant could have led independent evidence to prove any separate monetary transaction which was not done. Therefore, any way one looks at it, it is clear that part loan amount has been paid by the accused to the complainant which has not been acknowledged/endorsed by the complainant in her complaint or affidavit of evidence and neither is there any whisper of any such payment in the legal demand notice sent to the accused.

*21. **Secondly**, the complainant has not been able to give any independent evidence regarding availability of funds enabling her to advance Rs. 4,00,000/- to the accused in cash as friendly loan. During her cross-examination, some of the statements/admissions qua loan in question made by the complainant are as follows:*

(i) I have not mentioned anywhere in my legal notice, complaint or my evidence affidavit, the source of Rs. 4,00,000/- cash, which was handed over to the accused.

(ii) It is correct that no document with respect to withdrawal or otherwise cash of Rs. 4,00,000/- has been placed on record.

(iii) I had taken some money in cash from mother-in-law, and some cash was in my hand as I was working.

(iv) It is wrong to suggest that I had led only Rs. 1,50,000/- to the accused, and that is why I do not have any document to show from where I had arranged the amount of Rs. 4,00,000/-.

22. Though the complainant during her cross-examination has stated that part amount was taken by her from her mother-in-

law, nothing has been brought on record to prove the same. She has not even proven the "cash at hand" as alleged by placing on record relevant income tax returns proving the same. Once the complainant is confronted with questions regarding the source of funds qua loan allegedly advanced in cash to the accused, it was imperative upon the complainant to adduce evidence to show the availability of funds specifically keeping in mind the fact that contentious loan amount has been advanced in cash. The Hon'ble Delhi High Court in ***Sheela Sharma v. Mahendra Pal 2016 SCC OnLine Del 4696*** *held that:*

> *"31 .* ***<u>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</u>****. 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)*

Hence, the complainant has clearly failed to prove the source of funds used for advancement of alleged loan of Rs. 4,00,000/- to the accused and the entire transaction comes under a cloud of doubt due to lack of evidence, as the same has not been conclusively proven by the complainant.

23. ***Thirdly****, the defence of accused that she had returned Rs. 1,00,000/- to the complainant is supported by the testimony of DW-2 Mr. Arvind Kumar. Upon being questioned regarding the date on which the amount was given to her to be handed over to the complainant, the witness stated that he did not remember the exact date but it was some time in the first week of April,* *2015 while as per the version of the accused, this amount was handed over on 10.04.2015. It is reasonable that a person who is being examined about an incident that took place 8 years ago may not remember the exact date. Similarly, it has been admitted by the complainant in her cross-examination that she and the accused used to work in the same locality which has been re-iterated by DW-2 who stated in his cross-examination that it used to take only 10 to 15 mins to reach the office of complainant from their office. Thus, it is not inconceivable that an office boy would leave for half an hour for some work assigned by his superior at around 12:00 noon in the afternoon and would come back in time to resume his duties for the day. Mere suggestions would not discredit the testimony of an independent witness who has otherwise supported the version of the accused. The testimony of DW-2 cannot be discarded merely because he was unable to remember the denomination of currency notes especially considering that his testimony was recorded almost after 8 years of the incident in question.*

*24. **Fourthly**, the accused has taken steps like a reasonable person can be expected to do in circumstances when her cheques have been misused by another. Reply Ex. CW1/G to legal demand notice Ex. CW1/E is already on record wherein the accused has stated that friendly loan of Rs. 1,50,000/- was given to her by the complainant and certain documents (as mentioned in paragraph 6 of Ex. CW1/G) i.e. form 16, income slip of 3 months, statement of accounts, PAN Card, Voter ID and 6 blank signed cheques (cheque no. 974170 to 974175) were handed over by the accused to the complainant. It was further stated that another cheque bearing number 000003 was handed over by the accused at a later date upon insistence of the complainant. It was stated that later when the accused obtained loan from a nationalised bank, she demanded return of the aforementioned documents, which was refused by the complainant who started pressurising the accused to return loan of Rs. 1,50,000 /- which was partly paid in the bank account of complainant's husband and partly in cash at the complainant's office. However, when the accused was informed by her bank regarding presentation of cheque Ex. CW1/A, she issued instructions for cancellation of the cheques that had been handed over to the complainant for loan purpose. Therefore, as soon as the accused received information regarding presentation of the cheques, she issued instructions for stopping payment on them and even the legal demand notice Ex. CW1/E was duly replied through Ex. CW1/G by her stating the same facts. Infact, the accused, thereafter, also instituted* *complaints against the complainant. Complaint dated 21.05.2015 lodged with SHO, Police Station New Ashok Nagar, follow-up letter on it dated 07.09.215 and follow-up letter sent to ACP, East Delhi, Delhi Police dated 05.10.2015 are on record as Ex. DW 1/B wherein all facts as aforementioned have been mentioned by the accused, in her complaint dated 21.05.2015. Thereafter, when no action was taken by the police upon the complaints of the accused, she filed a complaint case CC No. 52019/2016 with Ld. ACMM, East District, Karkardooma Courts, Delhi upon which summoning order Mark-E was issued on 15.10.2020.*

25. *The facts as mentioned by accused in her complaints to the police and upon which a complaint case has also been filed upon her has also been consistently maintained by the accused during the entire trial, in the present case. In fact, the same defence has not only been taken by the accused in the present case but also in her leave to defend in CS No. 300/18 instituted by the complainant against the accused. Therefore, not only has the accused taken steps like a reasonable person would but has also consistently maintained her stance regarding the transaction between her and the complainant.*

26. *The inconsistencies in the defence of the accused, as pointed out by Ld. Counsel for complainant during his arguments can, under no circumstances, be considered as material inconsistencies. For instance, even if name of Mr. Arvind Kumar had not been mentioned by the accused in her police complaints Ex. DWl/B or reply Ex. CWl/G or in her notice under section 251 CrPC or in her application under section 145(2) NI Act, it is not material considering that she has specifically mentioned about taking of hand loan and returning the amount of Rs. 1,00,000/-. A person cannot be expected to remember each and every detail of the circumstances in question, at all times. Similarly, the fact that the loan allegedly taken by the accused from her employer was mentioned as hand loan and as medical loan at various stages of trial does not adversely affect the case of the accused as it is only the category of loan that has been mentioned differently and not the quantum of loan or loan transaction itself. Likewise, the fact that there was discrepancy in the statements of the accused regarding the timeline of April, 2015 wherein she stated that the amount of Rs. 1,00,000/- was returned on 10.04.2015 while she also stated that the harassment by complainant and her husband started in third week of April, 2015 cannot be considered to be a material inconsistency as a common man may forget the dates by a week or two especially after some*

> *time has passed since the incident occurred.*
>
> *27. It is a settled position of law that the ease of the complainant should stand its own legs. It cannot take advantage of the weakness of the defence, nor can the court, on its own make out a new case for the prosecution and convict the accused on that basis. It has been held by the Hon'ble Supreme Court in* ***Rahul Builders v. Arihant Fertilizers and Chemicals and Another (2008) 2 SCC 321****, the NI Act envisages application of the penal provisions which needs to be construed strictly. Therefore, even if two views in the matter are possible, the Court should lean in favour of the view which is beneficial to the accused. This is more so, when such a view will also advance the legislative intent, behind enactment of this criminal liability.*
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> *28. It is important to underscore the established canon of criminal law that in order to pass a conviction in a criminal case, the accused "must be" guilty and not merely "may be" guilty. The mental distance between "may be" guilty to "must be" guilty is a long one and must be travel not on surmises and conjectures, but by cogent evidence. In this case, after the accused successfully rebutted the presumption of consideration by raising a doubt the very factum of the transaction of loan. The accused has clearly presented a case which is superior in way. As per the settled law, this is all that what is required, as preponderance of probabilities is not a rigorous standard of proof, but only so much evidence as makes the court lean in favour of one side and not the other. Consequently, the benefit of doubt must go to the accused. The material on record does not suggest that the accused "must be" guilty whichever way one looks at it.*
>
> *29. Accordingly, this Court holds that the complainant has failed to prove his case. The accused has been able to rebut presumption under Section 118 and 139 NI Act arising in favour of the complainant."*

8. The Appellant's testimony is marred by material inconsistencies, particularly those that surfaced during cross-examination. At the outset, she unequivocally denied receiving any payment in her husband's bank account. However, when confronted with his bank statement, which reflected a transfer of ₹46,000/- from Respondent No. 2, she had no choice but to concede its receipt. In a further attempt to discredit this transaction, she

dismissed it as unrelated to the disputed debt, yet she failed to furnish any plausible explanation or documentary proof to substantiate this claim. Significantly, this payment found no mention in her legal notice, complaint, or affidavit, raising serious questions about the credibility of her version. The absence of any details regarding an alleged ‘separate transaction’ between Respondent No. 2 and the Appellant’s husband further weakens her stance. Crucially, despite this transaction forming the crux of her rebuttal, the Appellant’s husband was not examined as a witness to affirm that the payment had no connection with the loan in question. Given these contradictions, the Trial Court rightly concluded that Respondent No. 2 had indeed made a partial payment of ₹46,000/- towards discharging the alleged liability.

9. The alleged repayment of ₹1 lakh in cash was duly supported by the testimony of DW-2, Mr. Arvind Kumar, who categorically stated that he had delivered the amount to the Appellant on behalf of Respondent No. 2. The Appellant, in an attempt to discredit this testimony, argued that DW-2 was unable to recall the precise date of the transaction or the denominations of the currency notes. However, the Trial Court rightly dismissed this contention, holding that such minor lapses in memory were neither unusual, nor sufficient to cast doubt on the overall veracity of his statement, especially considering that the transaction had occurred nearly eight years earlier. DW-2 remained steadfast in his assertion that the cash was handed over in the first week of April 2015—a timeline that aligns with Respondent No. 2’s claim that the payment was made on 10th April, 2015. The inability to recall trivial details, such as currency denominations, does not negate the core fact of repayment, particularly when viewed in conjunction with the

other evidence on record. The Trial Court, therefore, found no cogent reason to disbelieve his testimony.

10. The Appellant also failed to produce any evidence to substantiate her claim that she had the financial capacity to lend ₹4,00,000/- in cash to Respondent No. 2. While she asserted during cross-examination that a portion of the loan was sourced from her mother-in-law, and the remainder was her personal "cash in hand," she did not examine her mother-in-law as a witness or provide any supporting documents or independent evidence to verify this claim. In this regard, the Trial Court, relying on a judgement of this Court in ***Sheela Sharma v. Mahendra Pal***,[4] noted that in the absence of documentary evidence to support the loan, it becomes relevant to consider whether the funds were reflected in the Appellant's income tax returns. However, the Appellant failed to establish the source of the funds. On this issue, it would be apposite to take note of the recent judgment of the Supreme Court in ***Sri Dattatraya v. Sharanappa***,[5] whereby the Court upheld the acquittal of the accused in a cheque dishonour case, on account of contradictions in the Complainant's statements, his inability to demonstrate the financial capacity to loan the amount, and the lack of acknowledgement of the loan in the Income Tax returns. On this issue, the Court held as follows:

> *"27. Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the Appellant as against his cross-examination relatable to the time of presentation of the cheque by the Respondent as per the statements of the Appellant. This is to the effect that while the Appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement*

[4] 2016 SCC OnLine Del 4696.
[5] Crl. Appeal No. 3257/2024, decided on 7th August, 2024.

> *during the cross examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the Respondent, after a period of six months of advancement.* ***Furthermore, there was no financial capacity or acknowledgement in his Income Tax Returns by the Appellant to the effect of having advanced a loan to the Respondent****. Even further the Appellant has not been able to showcase as to when the said loan was advanced in favour of the Respondent nor has he been able to explain as to how a cheque issued by the Respondent allegedly in favour of Mr Mallikarjun landed in the hands of the instant holder, that is, the Appellant.*
>
> *28. Admittedly, the Appellant was able to establish that the signature on the cheque in question was of the Respondent and in regard to the decision of this Court in Bir Singh (supra), a presumption is to ideally arise.* ***However, in the above referred context of the factual matrix, the inability of the Appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act 1881. The Respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.***
>
> *29. The Trial Court had rightly observed that the Appellant was not able to plead even a valid existence of a legally recoverable debt as the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties."*
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> [Emphasis Supplied]

11. In light of the aforenoted legal principles, the sAppellant had failed to establish a financial capacity to extend a loan of ₹4,00,000/-. Thus, in absence of any supporting material and other facts and discrepancies noted above, the Trial Court rightly concluded that the Appellant failed to discharge her burden of proving the loan, rendering her claim doubtful.

12. The Trial Court's findings also reveal that Respondent No. 2 took reasonable and proactive steps upon realizing that her cheques had been misused. She promptly issued instructions to stop the payment. In her response to the Appellant's legal notice, she unequivocally asserted that the cheques in question were part of the documents handed over for loan

purposes. This response (Ex. CW1/G) was consistent with her defence throughout the proceedings, wherein she maintained that she had taken a friendly loan of ₹1,50,000/-, which was partially repaid through bank transfer and cash. Furthermore, Respondent No. 2 did not remain passive; she escalated her grievance by lodging multiple complaints with the police (Ex. DW1/B) and subsequently filed a complaint case (CC No. 52019/2016), leading to the issuance of a summoning order. These actions, taken at the earliest opportunity, lend credence to her version and indicate that she was not merely raising a belated or concocted defence to evade liability. Given these facts, the Trial Court rightly concluded that the presumption of a legally enforceable debt under Section 139 of the NI Act stood effectively rebutted, and the burden shifted back to the Appellant, who failed to discharge it.

13. In light of the above, none of the Appellant's grounds merit interference with the impugned judgment. The acquittal of Respondent No. 2 is based on a reasoned and well-founded analysis of facts and law. Accordingly, this Court finds no reason to interfere with the impugned order of the Trial Court, acquitting Respondent No. 2 under Section 138 of the NI Act.

14. Dismissed, along with pending applications.

SANJEEV NARULA, J

MARCH 6, 2025
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