



2025:DHC:11491



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

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Date of Decision: December 12, 2025+ **CRL.REV.P. 562/2023 & CRL.M.(BAIL) 707/2023**

LAXMI RAWAT

.....Petitioner

Through: Mr. Sundeep Sehgal,
Advocate (through VC).

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State
with SI Gaurav, PS
Kalyanpuri.
Mr. Raj Kumar, Advocate
for R-2.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed challenging the judgment dated 27.02.2023, passed in Criminal Appeal No. 183/022, whereby the learned Appellate Court had upheld the judgment on conviction dated 01.10.2022 and modified the order on sentence dated 12.10.2022, in CC No. 2529/2017. The petitioner is also challenging the said judgment on conviction and order on sentence.

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

2.1. It is the case of the complainant/ Respondent No.2 that the

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parties were well known to each other and residing within the same vicinity. In November, 2015, the petitioner allegedly approached the complainant for a friendly loan as she was in dire need of money. Pursuant to the same, the complainant extended a friendly of ₹1.5 lakhs to the petitioner on 02.12.2015 on the assurance that the loan will be repaid soon. In March, 2016, the petitioner again approached the complainant for a further loan of ₹1.5 lakhs, and looking into the needs of the petitioner, the complainant advanced a loan of the said amount on 15.03.2016. In discharge of her liability, the petitioner issued the subject cheque for a sum of ₹3 lakhs, which was dishonoured and returned with the remark—"funds insufficient". When the petitioner failed to repay the amount within the stipulated period after receipt of legal notice, the complainant filed the complaint for offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

2.2. By the impugned judgment on conviction dated 01.10.2022, the learned Trial Court convicted the petitioner for the offence under Section 138 of the NI Act. It was noted that there were multiple discrepancies in the defence of the petitioner in relation to the subject cheque being allegedly stolen, lost or misplaced.

2.3. By the impugned order on sentence dated 12.10.2022, the learned Trial Court sentenced the petitioner to pay a fine of double the cheque amount, that is, ₹6,00,000/-, as compensation to Respondent No.2, and in default of payment of fine, to undergo simple imprisonment for a period of six months.

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2.4. The said orders were challenged by the petitioner in appeal. By the judgment dated 27.02.2023, the learned Appellate Court upheld the petitioner's conviction and reduced the fine amount to ₹5,00,000/-.

2.5. Aggrieved by the same, the petitioner has preferred the present petition.

3. The learned counsel for the petitioner submits that the conviction of the petitioner is unsustainable in law as the Courts below have failed to appreciate certain key aspects. He submits that the loans were allegedly extended in cash and there is no loan agreement between the parties to evidence the advancement of loan. He submits that absence of documentary proof casts doubt on the case of the complainant.

4. He submits that it has been overlooked that the complainant is a housewife and she had no financial capacity to extend a loan of ₹3 lakhs. He submits that pointed suggestions were made to the complainant during her examination in relation to her financial capacity, and she failed to cogently explain the source of the loan amount.

5. He submits that especially in case of cash transactions, the inability of the complainant to exhibit her capacity to extend such a loan is sufficient to rebut the statutory presumptions. He placed reliance on the judgment in the case of ***APS Forex Service Private Limited v. Shakti International Fashion Linkers* : AIR 2020 SC 945** to endorse his contention in this regard.

6. I have heard the counsel and perused the record.

7. Since the present revision petition has been filed under



Section 397 of the Code of Criminal Procedure, 1973, challenging the concurrent findings of both lower courts, this Court's role is limited to assessing the correctness, legality, and propriety of the impugned judgment.

8. It is trite law that this Court is required to exercise restraint and should not interfere with the findings in the impugned orders or reappreciate evidence merely because another view is possible unless the impugned orders are wholly unreasonable or untenable in law [Ref. *Sanjaysinh Ramrao Chavan v. Dattaray Gulabrao Phalke* : (2015) 3 SCC 123]. It is not open to the Court to misconstrue the revisional proceedings as a second appeal by sitting in appeal over the challenged orders. The Hon'ble Court in the case of *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* : (1999) 2 SCC 452 discussed the scope of revisional jurisdiction and held as under:

"5. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice...."

(emphasis supplied)



9. At the outset, since the execution and signatures on the cheques are not disputed, presumption under Section 138 and 118 of the NI Act is raised against the accused and in favour of the complainant. It is pertinent to note that the presumptions under Section 118 and 139 of the NI Act are not absolute and may be controverted by the accused. In doing so, the accused ought to raise only a probable defence on a preponderance of probabilities to show that there existed no debt in the manner so pleaded by the complainant in his complaint/ demand notice or the evidence. Once the accused successfully raises a probable defence to the satisfaction of the Court, his burden is discharged, and the presumption ‘disappears.’ The burden then shifts upon the complainant, who then has to prove the existence of such debt as a matter of fact. The Hon’ble Apex Court in **Rajesh Jain v. Ajay Singh** (*supra*), in this regard has observed as under:

“41. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words ‘until the contrary is proved’ occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. [Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513]

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44. The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling the



***burden may likewise shift to the complainant.** It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. The burden of proof may shift by presumptions of law or fact. In Kundanlal's case- (supra) when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced would have shown the non-existence of consideration. Though, in that case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Section 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.*

***45. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption 'disappears' and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue.** Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. [Basalingappa vs. Mudibasappa, AIR 2019 SC 1983; See also, Rangappa vs. Sri Mohan (2010) 11 SCC 441]"*

(emphasis supplied)

10. In the present case, the petitioner has sought to lay a challenge to her conviction only on the limited ground that no documentary proof has been adduced to establish the advancement of loans in cash and that the complainant did not have the financial capacity to extend a loan of such an amount.

11. Although the said ground has not been taken before this Court, it is seen that the primary defence agitated by the petitioner before both the learned Trial Court and the learned Appellate Court was that of the subject cheque being stolen or





lost. The Courts below were not persuaded by the said defence and found the story of the subject cheque being lost to be unbelievable. It was noted by the Courts that the complaint regarding loss of the subject cheque was made after receipt of the legal notice, and the other complaint did not mention anything about any signed cheque or cheque book of Nainital Bank (subject cheque was drawn on the said Bank). A detailed appreciation of the material on record was carried out by the learned Trial Court, which took note of the material discrepancies in the version of defence which shifted between assertions of the subject cheque having been stolen, lost and misplaced at different instances. It was also noted that the petitioner had peculiarly failed to inform the bank about the cheque being stolen/lost, and while a suggestion was put to the husband of the complainant about the cheque having been handed to the complainant by one Kamlesh Singh Rawat, however, the said individual had stood as surety for the accused petitioner during trial and at the time of suspension of sentence. The aforesaid factors rightly led the Courts below to reject the said defence.

12. Insofar as the issue of financial capacity is concerned, reliance has been placed by the petitioner on the judgment in ***APS Forex Service Private Limited v. Shakti International Fashion Linkers*** (*supra*). The relevant portion of the judgment is as under:

*“8.4. Now so far as the reliance is placed by the learned counsel appearing on behalf of the accused on the decision of this Court in **Basalingappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571]** , on going through the said decision, we are of the opinion that the said*



*decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the accused. In that case, before this Court, the defence by the accused was that the cheque amount was given by the complainant to the accused by way of loan. When the proceedings were initiated under Section 138 of the NI Act, the accused denied the debt liability and the accused raised the defence and questioned the financial capacity of the complainant. To that, the complainant failed to prove and establish his financial capacity. Therefore, this Court was satisfied that the accused had a probable defence and consequently, in absence of the complainant having failed to prove his financial capacity, this Court acquitted the accused. In the present case, the accused never questioned the financial capacity of the complainant. **We are of the view that whenever the accused has questioned the financial capacity of the complainant in support of his probable defence, despite the presumption under Section 139 of the NI Act about the presumption of legally enforceable debt and such presumption is rebuttable, thereafter, the onus shifts again on the complainant to prove his financial capacity and at that stage, the complainant is required to lead the evidence to prove his financial capacity, more particularly when it is a case of giving loan by cash and thereafter issuance of a cheque...***

(emphasis supplied)

13. The Hon'ble Apex Court in the case of ***Tedhi Singh v. Narayan Dass Mahant : (2022) 6 SCC 735*** had observed that the accused had the initial burden to set up this defence in his reply to the demand notice, finding that the complainant did not have the financial capacity to advance the loan. The Hon'ble Court held as under:

"10. ... The proceedings under Section 138 of the NI 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.”

(emphasis supplied)

14. While it is rightly contested that the issue of financial capacity was not considered by the learned Trial Court, the learned Appellate Court duly took notice of the arguments in this regard and rejected the same.

15. The learned Appellate Court aptly appreciated that although the reply to the legal notice remained an unexhibited document, however, there is no averment in the same regarding the complainant having no financial capacity to lend the loan amount. Pertinently, in her statement under Section 313 of the Code of Criminal Procedure, 1973 as well, the petitioner merely asserted that the subject cheque had been stolen from her home and made no averment regarding financial ability of the complainant. The onus cannot be said to be shifted on the complainant to prove his financial capacity merely because the accused makes a vague bald assertion.

16. Pertinently, the petitioner examined no independent material and led no evidence to showcase the financial incapacity of the complainant to extend the loan. Although the cross-examination of the complainant reflects that the defence sought



to make out a case of her financial ineptitude by putting certain suggestions to her, however, the complainant has categorically stated that she used to teach tuition classes from the years 1999 till 2002, and she had saved some money out of her profession. It was noted that she had further stated that some money was given by her husband, who was a Clerk in a bank in the year 2015, and other family member. In the opinion of this Court, the evidence of the complainant in the present case does not reflect that she had no wherewithal to advance a loan of ₹3 lakhs. Just as the defence can raise the defence of financial incapacity of the complainant through cross-examination, the complainant can similarly satisfy the Court on this aspect by giving suitable replies. The mere fact of the complainant being a housewife does not imply that she is incapable of lending loans of such an amount, especially when she used to teach tuition classes and she has explained that she had taken some money from her family.

17. It is apposite to place reliance on the case of ***Sanjabij Tari v. Kishore S. Borcar : (2025) 259 Comp Cas 685***, where while dealing with similar circumstances where the accused had raised the question of financial incapacity of the complainant to extend a loan of ₹6 lakhs, the Hon'ble Apex Court had found the explanation of the appellant/ complainant having advanced the loan by arranging money from his father and by parting some amount from a loan undertaken by him to be credible.

18. In such circumstances, in the opinion of this Court, it had been rightly found by the Courts below that the petitioner had failed to rebut the presumptions under Sections 118 and 139 of



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the NI Act.

19. As far as the question of sentence is concerned, considering that the petitioner is a woman who is stated to be a housewife, this Court is of the opinion that the learned Courts below have rightly refrained from insisting upon carceral punishment. The learned Appellate Court has also rightly modified the fine amount to ₹5,00,000/- after considering the lapse of time since dishonour of cheque and restrained from imposing any carceral punishment. The same in the opinion of this Court is sufficient.

20. An amount of ₹1.2 lakhs is stated to be deposited with the learned Appellate Court. Further, as directed by this Court by order dated 18.05.2023, an additional amount of ₹1.3 lakhs has been deposited with the learned Trial Court. Let the deposited amount be released in favour of the complainant on the strength of the present order and the remaining amount be paid to the complainant within a period of four weeks. It is made clear that in case of default in payment of fine, the petitioner shall undergo simple imprisonment for a period of six months.

21. In view of the aforesaid discussion, this Court finds no infirmity in the impugned judgment dated 27.02.2023 so as to warrant any interference.

22. The petition is therefore dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

DECEMBER 12, 2025/DV

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