



2025:DHC:1468



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

% **Date of order: 18th February, 2025**

+ **CRL.L.P. 114/2017**

KAMAL TALWAR

.....Petitioner

Through: **Mr. Abinash K. Mishra and Mr.
Gaurav Kr. Pandey, Advocates**

versus

STATE (NCT OF DELHI) & ANR

.....Respondents

Through: **Mr. Satish Kumar, APP for the State
Mr. Kumar Vaibhaw, Mr. Mohd.
Ashaab and Ms. Somaya Gupta,
Advocates for R-2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter “Cr.P.C.”) read with Section 482 of Cr.P.C. has been filed on behalf of the petitioner challenging the order dated 3rd November, 2016 (hereinafter “impugned order”) passed by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi (hereinafter “MM”), whereby the respondent no. 2 was acquitted of the charges framed under Sections 138/142 of the Negotiable Instruments Act, 1881 (hereinafter “NI Act”).

2. The brief facts of the case are that the petitioner has allegedly

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advanced a friendly loan of Rs. 19,76,500/- to respondent no. 2, which was recorded in a loan agreement dated 19th December, 2009, executed between respondent no. 2 and one Rohit Dua. It is alleged that as per the agreement, respondent no. 2 acknowledged the loan liability and issued the cheque No. 738008, dated 5th December, 2011, drawn on Syndicate Bank, Shahdara Branch, Delhi, in favor of the petitioner regarding the aforesaid loan amount. The said cheque was presented for encashment at Canara Bank, Shankar Nagar, Delhi, however, the same was dishonored on 14th December, 2011 with the return memo stating “Account Closed.”

3. In response to the said dishonor, the petitioner issued a legal notice dated 22nd December, 2011, demanding payment within the statutory period. However, respondent no. 2 neither replied nor made any payment to that effect.

4. Thereafter, the petitioner filed a complaint case before the learned MM, and after considering the contents of the complaint, legal notice, statement of the complainant, and other material on record, the learned MM took cognizance and issued summons to the respondent no. 2. Subsequently, charges were framed under Sections 138/142 of the NI Act by learned MM vide order dated 3rd November, 2016.

5. After considering the evidence on record and legal submissions made on behalf of the parties, the learned MM acquitted the respondent no. 2 under Sections 138/142 of the NI Act vide impugned order dated 3rd November, 2016.

6. Aggrieved by the same, the petitioner filed the present petition



challenging the said acquittal.

7. Learned counsel for the petitioner submitted that the learned MM failed to appreciate the documentary evidence placed on record, particularly the loan agreement dated 19th December 2009, the dishonored cheque, and the returning memo, all of which explicitly recorded the liability of respondent no. 2.

8. It is submitted that the learned MM did not consider the loan agreement in its proper legal perspective, despite it being a crucial document establishing the existence of a legally enforceable debt.

9. It is further submitted that respondent no. 2, in his insolvency proceedings, admitted liability of approximately Rs.17,00,000/- payable to the petitioner, which corroborates the petitioner's claim that a legally enforceable debt exists in the instant case and therefore, the learned MM passed the impugned order erroneously.

10. It is submitted that the learned MM erred in ignoring the report of the handwriting expert, who confirmed that the signatures on both the cheque as well as the loan agreement are those of respondent No. 2.

11. It is further submitted that the learned MM failed to consider the statutory presumption under Section 139 of the NI Act, which states that once a cheque is issued, it is presumed to have been issued in discharge of a legally enforceable debt unless rebutted with cogent evidence.

12. In support of the submissions, the learned counsel for the petitioner relies on the judgment of the Hon'ble Supreme Court in ***Rohitbhai Jivanlal Patel vs. State of Gujarat & Anr.***, (2019) 18 SCC 106, which held that the



burden to rebut the presumption under Section 139 of the NI Act lies on the accused and the same cannot be discharged merely by denial.

13. In view the foregoing submissions, it is prayed that the instant petition may be allowed.

14. *Per contra*, learned counsel for the respondent No. 2 vehemently opposed the petition submitting to the effect that there is no illegality or error in the impugned order passed by the learned MM, wherein the respondent no, 2 is acquitted under Sections 139/142 of the NI Act.

15. It is submitted that there are several discrepancies and contradictions in the petitioner's case, including inconsistencies in the legal notice, complaint, and the statements made by the petitioner during his examination-in-chief and cross-examination.

16. It is further submitted that the petitioner failed to mention the date of the loan agreement in the legal notice and the complaint, and for the first time disclosed it during his cross-examination, which raises serious doubts regarding the credibility of the said claim.

17. It is vehemently submitted that there are no documents on record to establish the duration, interest rate, or purpose of the alleged loan, and even the loan agreement does not conclusively prove that the amount was given by the petitioner to respondent no. 2.

18. It is further submitted that for proving the alleged loan agreement, Mr. Rohit Dua, who is another party to the agreement, was never examined as a witness, making the document legally unreliable.

19. It is submitted that the learned MM rightly held that the presumption



under Section 139 of the NI Act does not automatically favour the complainant, and the burden remains on the complainant to prove the existence of a legally enforceable debt.

20. Furthermore, it is submitted that the learned MM correctly relied on the judgment of the Hon'ble Supreme Court in ***Vijay vs. Laxman & Anr., (2013) 3 SCC 86***, which held that mere issuance of a cheque does not, by itself, prove the existence of a legally enforceable debt. It is further submitted that in the said judgment, the Hon'ble Supreme Court clarified that the presumption under Section 139 of the NI Act is rebuttable, and where inconsistencies exist in the complainant's version, the benefit of doubt must be given to the accused.

21. In light of the aforementioned submissions, it is prayed that the instant petition may be dismissed being bereft of any merit.

22. Heard learned counsel for the parties and perused the record.

23. At this juncture, it is apposite for this Court to examine the findings of the impugned order and the relevant portion of the same is as follows –

“18. The case of the complainant becomes doubtful for other reasons also. The complaint or the evidence of the complainant does not find mention of any reason for which the loan was required by the accused. But complainant in his cross-examination has stated that the accused required a sum of Rs. 19,76,500/- for repaying certain loans. He has further stated that he did not inquire from the accused the reason for taking loan from others or why he was unable to pay the loan amount himself. This part of the testimony of the complainant fails to appeal the judicial conscience of this court. It would be unrealistic to expect that a person would put to stake a huge



amount of 19,76,500/- in the name of friendly loan, despite being conscious of the fact that accused has failed to repay his earlier loans.

19. Complainant in support of his case has also summoned judicial record of solvency petition filed by the accused titled as Chanchal Mehta v. State which was disposed on 09.07.2012. As per the complainant, accused in schedule A of his solvency petition had mentioned a debt of Rs. 17,00,000/- towards the complainant. However this submission by the complainant fails to advance his case in any manner as the same does not show that the cheque in question in the present case was issued in discharge of the debt mentioned in the solvency petition. Furthermore, the cheque in question in the present case is for an amount of Rs. 19,76,500/- whereas the solvency petition only mentions a debt of Rs. 17,00,000/- towards the complainant. The other evidence led by the complainant also does not reinforce the case of the complainant in any manner.”

24. From the foregoing extracts, it is made out that while passing the impugned order, it was observed by learned MM that the petitioner had failed to establish the existence of a legally enforceable debt and accordingly, given the presumption under Section 139 of the NI Act, learned MM has acquitted the petitioner in the instant case.

25. For the sake of convenience, Section 139 of the NI Act is reproduced hereinunder –

“139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

26. Section 139 of the NI Act raises a presumption in favour of the



complainant, which is not absolute and is rebuttable. Once the accused raises a probable defense, the burden shifts back to the complainant to prove the debt with cogent evidence.

27. In the present case, the petitioner has not been able to demonstrate his financial capacity to lend Rs.19,76,500/-, as no bank statements, withdrawal records, or independent witnesses were produced to establish that he had the requisite funds at the time of lending.

28. In regard to the above, the Hon'ble Supreme Court in ***John K. Abraham vs. Simon C. Abraham & Anr., (2014) 2 SCC 236*** held that the complainant must establish that not only a cheque was issued, but also a legally enforceable debt existed at the time of issuance. The relevant paragraph of the same is reproduced hereinunder –

“9. It has to be stated that in order to draw the presumption under Section 118 read along with Section 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.”

29. Keeping the aforementioned law in mind, it is observed that in the instant case, the failure to provide any substantive proof of financial capacity casts serious doubts on the petitioner's version of events. Additionally, the loan agreement dated 19th December, 2009 was executed months after the alleged loan advancement, raising questions about its authenticity. The



petitioner has failed to explain as to why such a substantial loan transaction was not documented at the time of payment but was recorded much later. Furthermore, the agreement was not witnessed by any independent party, and Mr. Rohit Dua, who is a key party to the said agreement, was never examined as a witness, making the document legally unreliable.

30. At this juncture, it is pertinent to mention the case of ***Vijay vs. Laxman & Anr., (2013) 3 SCC 86***, wherein the Hon'ble Supreme Court held that where a complainant fails to provide specific details or lacks corroborative evidence, the benefit of doubt must go to the accused.

31. The inconsistencies in the complainant's statements regarding the date and the mode of loan advancement further weaken his case. Furthermore, in the legal notice, the complainant did not specify when or how the loan was given, and during his cross-examination, new details emerged that were not part of the original pleadings, creating serious contradictions that strike at the root of the matter. In the case of ***Krishna Janardhan Bhat vs. Dattatraya G. Hegde, (2008) 4 SCC 54***, the Hon'ble Supreme Court held that mere issuance of a cheque does not automatically establish liability unless supported by cogent evidence, and the complainant must prove that a legally enforceable debt existed at the time of issuance of the cheque. It is pertinent to note that the petitioner contended that the respondent no. 2 acknowledged the liability of Rs. 17,00,000/- during the insolvency proceedings, thereby establishing the existence of legally enforceable debt in the instant case.

32. However, mere acknowledgment of liability of Rs.17,00,000/- in the



insolvency petition filed by the respondent no. 2 does not conclusively establish that the cheque in question was issued in discharge of the said liability. The cheque amount of Rs. 19,76,500/- does not match the insolvency liability of Rs. 17,00,000/-, and the petitioner has failed to establish a clear nexus between the two transactions, further weakening his case.

33. The handwriting expert's report, though corroborative, does not independently establish a legally enforceable debt. The learned MM rightly held that proving the authenticity of a signature does not, by itself, establish liability, particularly when the surrounding circumstances make the loan transaction doubtful.

34. In the instant case, the learned MM correctly observed that respondent no. 2 successfully raised doubts regarding the authenticity of the alleged loan transaction, particularly due to inconsistencies in the petitioner's pleadings, the absence of financial capacity proof, and the failure to produce crucial witnesses. The petitioner, despite having ample opportunity, failed to provide cogent evidence to sustain the presumption under Section 139 of the NI Act.

35. In view of the same, it is observed that the petitioner's case suffered from inconsistencies and contradictions, including the failure to mention key details of the loan transaction, absence of supporting witnesses, and lack of direct evidence linking the said cheque to the legally enforceable debt. Therefore, the learned MM has rightly held that the burden to prove the debt rested upon the complainant, and that mere issuance of a cheque did not



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conclusively establish liability.

36. Accordingly, this Court is of the view that the learned MM has rightly acquitted the respondent as the petitioner/complainant has clearly failed to establish beyond reasonable doubt that the cheque was issued in discharge of a legally enforceable debt.

37. Taking into consideration the foregoing discussions, this Court finds no reason to interfere with the findings of the impugned order passed by the learned MM as there is no illegality or error in the same.

38. In light of the same, the impugned order dated 3rd November, 2016 passed by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi in Case no. 48396 of 2016 is hereby upheld.

39. Accordingly, the instant petition stands dismissed alongwith pending applications, if any.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 18, 2025
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Click here to check corrigendum, if any