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

+ **CRL.L.P. 321/2025 & CRL.M.A. 16391/2025**

M/S SHITLA PAPERS PVT LTD

.....Petitioner

Through: Mr. Aakash Goswami, Advocate.

versus

M/S SRIVASTAVA AUTOMOBILES & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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26.05.2025

CRL.M.A. 16392/2025 (seeking condonation of delay of 50 days in filing the present appeal)

1. For the grounds and reasons stated in the application, the same is allowed and the delay of 50 days is condoned.
2. The application stands disposed of.

CRL.L.P. 321/2025

3. The present application filed under Section 419(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 378(4) of the Code of Criminal Procedure, 1973²) seeks leave to appeal against judgment dated 9th January, 2025, passed by the Judicial Magistrate First Class-04, North District, Rohini Courts, New Delhi, dismissing the Appellant's complaint

¹ "BNSS"

² "CrPC"



under Section 138 of the Negotiable Instrument Act, 1881³, bearing CT Case No. 80 of 2019 titled as “***M/s Shitla Papers Pvt. Ltd. vs. M/s Srivastava Automobiles & Anr***”.

4. The case of the Appellant, in brief, is as follows:

4.1. Naveen Kumar Srivastava (Respondent No. 2), on behalf of M/s Srivastava Automobiles (Respondent No. 1), placed an order with the Appellant for the supply of paper and paper boards. Pursuant thereto, the Appellant effected delivery of the goods and raised computer-generated invoices corresponding to the transactions. In part-discharge of the outstanding liability arising therefrom, Respondent No. 2 issued a cheque bearing No. 081361 dated 1st September, 2018, for a sum of ₹15,00,000/-. Upon presentation, however, the said cheque returned unpaid with the endorsement “Insufficient Funds”.

4.2. Upon service of summons, Respondent No. 2 entered appearance and was served with a notice under Section 251 CrPC, whereupon he pleaded not guilty and sought to contest the matter. At that stage, he denied any subsisting liability, asserting that the entire amount due had already been discharged through RTGS payments. He further contended that the subject cheque had been issued only as a security instrument. Nevertheless, he conceded that the cheque bore his signature and that all particulars therein had been filled in by him.

4.3. In support of the complaint, the Appellant examined himself as CW-1. Thereafter, the statement of Respondent No. 2 was recorded under Section 313 of CrPC, wherein he reiterated that the cheque had been handed over to one Mr. Dinesh Sharma, the Complainant’s authorised representative, only

³ “NI Act”



as security, and that no liability remained outstanding. Respondent No. 2 deposed as DW-1 and also proved the Statement of Account of M/s Srivastava Automobiles, which was marked as 'Ex. DW-1/1'.

4.4. Upon appreciation of the evidence adduced by the parties and the arguments advanced, the Trial Court rendered the impugned judgment, dismissing the complaint and acquitting Respondent No. 2.

5. Aggrieved by the aforementioned decision, the Appellant has filed the present appeal, urging the following grounds:

5.1. The Trial Court failed to appreciate the statutory presumption under Sections 118(a) and 139 of the NI Act, which squarely apply in the present case in view of the admitted execution of the cheque by Respondent No. 2. Once the foundational facts were established, the burden shifted upon the accused to rebut the presumption, which was not discharged.

5.2. The cheque in question was issued towards a legally enforceable debt arising out of the commercial supply of goods. The Respondents neither denied the transaction of supply nor were able to rebut, through cross-examination or defence evidence, the presumption of liability. The Trial Court's finding to the contrary is therefore erroneous and unsustainable in law.

5.3. The statutory demand notice issued under Section 138(b) of the NI Act was duly served upon Respondent No. 2. Despite receipt, neither a reply was furnished, nor any payment was made, which materially supports the Appellant's case and demonstrates that the defence set up during trial was merely an afterthought.

5.4. The Trial Court failed to consider the judgment of the Bombay High Court, Nagpur Bench, in Civil Appeal No.795/2018 titled as **Prakash**



Madhukarrao Desai v. Dattatraya Sheshrao Desai,⁴ wherein the Court held that even if a transaction is not reflected in the books of accounts or income tax returns of the payee, it may still constitute a legally enforceable debt for the purposes of Section 138 of the NI Act, particularly when the execution of the cheque is admitted and the presumption under Section 139 stands un rebutted.

5.5. The Trial Court's decision is vitiated by a mechanical approach. While relying on general legal principles laid down by the Supreme Court, the Court failed to correctly apply them to the specific facts and circumstances of the present case. The impugned judgment is, therefore, liable to be set aside for non-application of judicial mind and misapplication of settled law.

6. The Court has carefully considered the aforementioned contentions and perused the record. The legal principles regarding statutory presumptions under the NI Act are well settled. In cases arising under Section 138 of NI Act, once the execution of the cheque is admitted, two presumptions operate in favour of the holder. First, under Section 118(a), the cheque is presumed to have been drawn for consideration. Second, Section 139 mandates a further presumption that the cheque was issued in discharge, wholly or in part, of a legally enforceable debt or liability. These provisions together cast an initial evidentiary burden upon the accused to rebut the presumption of liability.

7. That said, the presumption under Sections 118(a) and 139 is rebuttable. The Supreme Court has repeatedly held that, to discharge this burden, the accused need not prove their defence beyond reasonable doubt.

⁴ 2023:BHCNAG:12352



It would suffice if the Accused were able to raise a probable defence, on a preponderance of probabilities, sufficient to create reasonable doubt in the complainant's version. Once such a threshold is crossed, the burden shifts back to the Complainant to prove the existence of a legally enforceable debt or liability.

8. 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.⁵

9. A perusal of the impugned order in light of the aforementioned legal principles reveals 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 expressly acknowledged that the presumption stood attracted in favour of the Appellant. 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, the impugned order records pertinent findings:

"5 Brief facts of the case are that accused had approached the complainant for purchase of paper and papers board and placed the order accordingly. Thereafter, complainant had supplied the said goods according to the accused's demand and invoices were generated. Thereafter, in discharge of the liability towards the goods, accused had issued cheque in question to the complainant and same was got dishonored. Accordingly, the present case has been filed. It is pertinent to

⁵ **Rajesh Jain v. Ajay Singh**, (2023) 10 SCC 148.



mention that the present case has been filed for an amount of Rs. 15,00,000/- and complainant has placed on record invoices exhibited as Ex. CW-1/7 (colly) to show the liability of the accused person. Further, accused is a signatory for the cheque in question. Complainant has also placed on record customer ledger account of the accused person Ex. CW-1/9 (colly) for the duration 01.04.2017 to 30.06.2017, 01.7.2017 to 31.03.2018 and 01.04.2018 to 01.01.2019. It is pertinent to mention that as per the ledger account of duration of 01 .04.2018 to 01.01.2019, closing balance of the accused was 6,31,115/- till 05.12.2018. It is pertinent to mention that cheque in question is having the date of 01.09.2018 and same was dishonored on 02.11.2018 and legal demand notice was sent to the accused on 17.11.2018 and thereafter, present case was filed before the court on 03.01.2019.

6 In this matter, during the cross-examination of AR of the complainant company namely Naresh Kumar Sharma as CW1, it was deposed by CW1 that complainant company has business relations with accused firm since 2015 approximately and last business transactions were held between the parties in the month of June 2017. It was deposed by the CW1 that no purchase order from the accused firm has been filed before the court and it has been admitted by CW1 that there are no signatures of accused firm on the said invoices Ex. CW-1/7 (colly). It was specifically deposed by CW1 that at the time of presentment of cheque in question, there was outstanding balance of Rs. 18,31,000/- approximately. However, when witness was confronted with the ledger account of the duration 01.04.2018 to 01.01.2019 exhibited as Ex. CW-1/9 (coll) and was asked about the outstanding amount towards the accused, witness deposed thereon that as per the ledger, the outstanding amount was of Rs . 6,31,115/-. It was deposed by CW1 that he does not remember the date of last payment received from accused firm and denied the suggestion that accused had done the payment of Rs 5,00,000/- through RTGS on 01.01.2019. It was deposed by CW] that he cannot tell whether complainant company had received the said amount. During the cross-examination, CW1 admitted the fact that complainant company had received an amount of Rs 5,00,000/- vide UTR no. SBIN519 from accused. CW1 further deposed that complainant company had also received an amount of Rs 3,00,000/- on 31.12.2018. It was deposed by CW1 that payment of Rs 5,00,000/- dated 01.01.2019 is not showing in the ledger filed by the complainant. CW1 specifically denied the suggestion that intentionally no ledger account reflecting the payment of Rs. 5,00,000/- has been filed before the court.

7 After analysing of the deposition done by CW1 and perusal of documents filed by the complainant and accused person, court is of the view that complainant has failed to establish its case beyond reasonable



doubt and has also failed to show that at the time of dishonornment of the cheque in question and filing of the complaint before the court, there was liability of the accused person for the amount of cheque in question on following grounds:

(a) Complainant has not placed any purchase order before the court to show that accused had placed order at the company of the complainant for some goods. Despite the specific question regarding non-placing of said document on record by the complainant, said document was never placed before the court by the complainant and complainant had not bothered to take any steps to bring the same before the court on record.

(b) Latest ledger paca for the duration 01.04.2018 to 01.01.2019 Ex.CW-1/9 (colly) clearly reflects that closing balance towards the complainant proprietorship concerned was of Rs. 6,31,115/- which is reflecting that accused was not having the liability of amount of cheque in question and he was having the liability of Rs. 6,31,115/- only till 05.12.2018. Same is clearly suggesting that at the time of presentment of cheque in question, accused was not having the liability of Rs. 15,00,000/- and he was having the liability of lesser amount of Rs. 6,31,115/-. Ld. counsel for accused had relied on various judgment wherein it was held that if the cheque was for a sum higher than the amount that was due on the date when cheque is presented, drawer of the cheque cannot be convicted for the offence u/s 138 NI Act.

(c) Moreover, in this case, CW1 has admitted the fact in his cross-examination that accused company received Rs. 5,00,000/- an Rs. 3,00,000/- from the accused but it is pertinent to mention that payment of Rs. 5,00,000/- of dated 01.01.2019 is not mentioned in the ledger account of the duration 01.04.2018 to 01.01.2019. This non reflection of receiving of payment in the ledger account of the complainant has also raised the doubt in the story of the complainant. Moreover, this acceptance of payment by CW1 in his cross-examination is suggesting that accused has also given further payment towards the due amount of Rs. 6,31,115/- as per the ledger account on 01.01.2019. It is pertinent to mention that CW1 has also accepted during his cross-examination that complainant company has also received Rs. 3,00,000/- on 31.12.2018, same has not been reflected also in the ledger account of the complainant. During the cross-examination of CW1, it has been clearly accepted by the CW1 that complainant company has received the payment of Rs. 5,00,000/- through the abovementioned UTR number and Rs. 3,00,000/- on 31.12.2019. Despite the receiving of — said the payments, same has not been shown the ledger account of the complainant company. Furthermore, in support of the fact of payment of Rs. 5,00,000/- by the accused to the complainant, accused has placed on record the RTGS details through his bank account



statement Ex. DW-1/1 which is clearly reflecting that payment of Rs. 5,000,29.50/- was done to the complainant through abovementioned UTR no. Perusal of said document also reflects that same is duly signed and stamped by the concerned bank. Therefore, doubt cannot be created on Ex. DW-1/1. This document has successfully established the fact that one payment of Rs. 5,000,29.50/- was done to the complainant on 01.01.2019 through online process and this fact is also established from the admission of CW1 that one payment of Rs. 3,00,000/- was also done by the accused. However as discussed above, same are not reflecting in the ledger account of the complainant.

In view of the observation, court is of the view that the complainant had failed to show the liability of the cheque amount towards the accused and accused has created the doubt in the story of the complainant successfully.

8. Conclusion:

8.1. *Thus the unequivocal conclusion that comes forth is that the complainant has failed in establishing of the culpability under s. 138 of the NI Act against the accused **Sh. Naveen Kumar Srivastava (Proprietor of M/s. Srivastava Automobiles)**. Accordingly, accused stands acquitted of the offence culpability under s. 138 of the NI Act.”*

10. The Complainant produced invoices and also copies of ledger reflecting business transactions to prove outstanding liability. However, during cross-examination, the Complainant's own witness (CW1) candidly admitted that no purchase orders bearing the Accused's signature were placed on record to substantiate the alleged supply of goods under the said invoices. Furthermore, the witness conceded that the invoices themselves did not bear any acknowledgment or signature of the Accused to evidence receipt of goods. This omission undermines the foundational basis of the Complainant's claim regarding the existence of a legally enforceable debt.

11. Furthermore, the Complainant also admitted that the last recorded transaction between the parties took place in June 2017, more than a year prior to the date of the cheque in question, i.e., 1st September, 2018. In the



absence of any cogent material evidencing the supply of goods or acknowledgment of liability by the Accused proximate to the issuance of the cheque, the Trial Court was, thus, not persuaded to invoke the presumption under Section 139 of the NI Act.

12. Crucially, the Appellant failed to prove that there was liability of the accused person for the amount of cheque in question CW1 initially deposed that a sum of INR 18,31,000/- was outstanding at the time of cheque presentation. However, when confronted with the Complainant's own ledger account for the period 1st April, 2018, to 1st January, 2019 [Ex. CW-1/9], CW1 admitted that the closing balance as on 5th December, 2018 stood at INR 6,31,115/-, which was lesser than the cheque amount of INR 15,00,000/-. CW1 also admitted during cross-examination that the Complainant received two payments from the accused: INR 5,00,000/- on 1st January, 2019 and INR 3,00,000/- on 31st December, 2018. However, neither of these transactions were reflected in the ledger accounts filed by the Complainant. The Trial Court, thus, rightly concluded that this omission raised serious doubts about the accuracy and reliability of the Complainant's records.

13. It is well established that a ledger account maintained in the regular course of business may carry evidentiary value under Section 34 of the Indian Evidence Act, 1872⁶. However, such entries, being unilateral records created by the creditor, cannot by themselves establish a legally enforceable liability, particularly when the liability is disputed. Courts have consistently held that such ledger entries must be corroborated by contemporaneous and primary transactional documents, such as signed invoices, delivery challans,



or debit notes, which serve to substantiate the underlying transactions.

14. In the present case, the evidentiary value of the ledger is significantly undermined for multiple reasons. First, the Appellant has failed to produce any signed invoices or delivery acknowledgments to demonstrate actual supply of goods pursuant to the entries reflected in the ledger. Second, and more critically, the ledger itself reflects a closing balance of INR 6,31,115/- as on 1st January, 2019, far short of the cheque amount of INR 15,00,000/-. This disparity is not a minor accounting irregularity but a substantial inconsistency that directly impairs the Appellant's claim that the cheque in question was issued against an existing and legally recoverable debt. Moreover, the omission of earlier RTGS payments from the ledger further erodes its reliability. When viewed cumulatively, these factors cast serious doubt on the veracity of the ledger and the Appellant's overall narrative regarding the nature and quantum of liability. Thus, mere production of a ledger cannot, in law, discharge the burden of proving a legally enforceable debt or liability under Section 138 of the NI Act.

15. Moreover, the Respondents substantiated their claim by placing on record the Statement of Account of M/s Srivastava Automobiles [Ex. DW-1/1], which clearly records an online transfer of INR 5,00,029.50/- to the Appellant on 1st January, 2019. This transaction, duly supported by authenticated bank records and unrebutted on material particulars, coupled with the categorical admissions made by CW-1 during cross-examination, fortifies the Respondents' defence. The Trial Court rightly held that such documentary evidence, coupled with CW1's admissions, rendered the Complainant's claim of an outstanding liability of INR 15,00,000/- highly

⁶ "IEA"



doubtful.

16. In view of the foregoing discussion, although the issuance of the cheque and the signature thereon stood admitted, thereby attracting the statutory presumption under Sections 118 and 139 of the NI Act, the Respondents succeeded in discharging their initial burden by raising a credible and probable defence. This defence, resting on material inconsistencies in the Complainant's own evidence and records, remained uncontroverted. Consequently, the Complainant failed to establish that the cheque was issued in discharge of an existing and legally enforceable liability. Once the statutory presumption stood rebutted, the burden reverted to the Appellant to prove affirmatively that the cheque was issued towards a subsisting debt. However, the Appellant fell short of discharging this burden.

17. Thus, the impugned judgment reflects a cogent and well-reasoned analysis of both the factual matrix and the applicable legal principles. The acquittal of Respondent No. 2 is neither perverse nor contrary to law, and this Court finds no ground to interfere with the conclusion arrived at by the Trial Court.

18. Accordingly, the present application seeking leave to appeal is dismissed along with pending applications.

SANJEEV NARULA, J

MAY 26, 2025/as