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

+ CRL.REV.P. 619/2022 & CRL.M.(BAIL) 1146/2022

NALI VAMSIDHAR

.....Petitioner

Through: *Appearance not given.*

versus

STATE NCT OF DELHI & ANR

.....Respondents

Through: Mr. Hitesh Vali, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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10.11.2025

1. This revision petition under Section 397 of the Code of the Criminal Procedure, 1973¹ assails the judgement dated 13th September, 2022 passed by the Sessions Court upholding the conviction of the Petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881.²
2. The Trial Court, by judgment dated 6th September, 2021, held the Petitioner guilty of the offence under Section 138 of NI Act and order dated 8th October, 2021, and awarded simple imprisonment for one month and a fine of INR 6,50,000/-, directed to be released as compensation under Section 357 Cr.P.C. within sixty days, with a default sentence of simple imprisonment for two months. The Sessions Court maintained the conviction and modified the sentence to the extent that the compensation be paid within sixty days from the date of the appellate judgment, failing which

¹ "Cr.P.C."



the Petitioner shall undergo simple imprisonment for seven days.

3. The Petitioner invokes this Court's revisional jurisdiction alleging perversity and manifest error. Briefly: the accused allegedly obtained a friendly loan of INR 5,00,000/-; issued post-dated cheque No. 389243 dated 6th June, 2017 for the same amount; the cheque was returned unpaid on 15th June, 2017 with the remark "*Kindly contact drawer/drawee bank & present again*"; a legal demand notice dated 10th July, 2017 was issued and returned "unclaimed"; the complainant thereafter filed a complaint under Section 138 NI Act.

4. The Trial Court summoned the accused and framed notice under Section 251 Cr.P.C. on 29th January, 2019, to which the accused pleaded not guilty. Post-summoning, the complainant again deposed as CW-1. The accused's statement under Section 313 Cr.P.C. was recorded and defence examined a bank witness (DW-1). On consideration of the material, evidence added by parties, the Trial Court reasoned as follows: -

20. *Another defence led by counsel for accused is that the cheque in question does not bear the signature of accused. In this regard counsel for complainant submits that the reason for dishonour of cheque as per return memo is "Kindly contact drawer/drawee bank and present again" and not "signature differs". Counsel for complainant further submits that he had moved an application for comparison of signatures. Upon filing of reply by accused's counsel, the said application was decided wherein it was held that the comparison of signatures must be done by this court at the relevant stage. In view of power given under Section 73 Indian Evidence Act, this court at the stage of final arguments compared the signatures of accused on cheque in question with the signature done on Notice framed under Section 251 Cr.P.C. and statement of accused recorded under Section 313 Cr.P.C.. This court is of the view that there is no difference between the signature on cheque in question and admitted signature.*

21. *Mere denial of a signature of the accused on the cheque in question is not sufficient to hold that the signature found is not the signature of accused. It is not upon the complainant to prove the signature of accused on cheque in question, rather he only has to prove that the said cheque in question has been issued in discharge of existence of debt or legal liability. If the accused has*

² "NI Act"



raised such defence, it is upon him to prove that the signature on cheque is not his. In this regard, accused has not brought an iota of evidence rather he is opposing the application of complainant for comparison of signatures. He stated in his application that bank official is the correct authority for comparison of signature. If the correct authority is bank official in the opinion of accused, he should have summoned the same. Therefore, in the opinion of this court, the said defence is a mere sham defence to escape from the liability arising from the cheque in question.

22. Another defence raised by accused is that the cheque in question was not issued in discharge of existence debt or liability rather is a stolen cheque and the said cheque was destroyed by Bank in 2015. In the support of his defence accused examined a witness DW1, Shri Swapnil. Perusal of examination and cross examination of DW1 reveals that there is no proper written authorization letter for the concerned witness from the bank official to testify. DW1 has stated in his cross examination that he has no knowledge of the fact whether any copy of police complaint was filed when bank was intimated about cheque being stolen. He further stated that he does not remember whether the information of cheque being stolen was given in writing. He also stated that the said cheque was destroyed after receiving the information about cheque being stolen. In the support of this statement, he has also produced on record a certificate on behalf of ICICI Bank, Ex.DW1/l, showing that the cheque in question has been destroyed in the book of account of the bank.

23. It has been held in **Hiten P Dayal v. Bratindranath Banerjee reported in (2001) 6 SCC 16** that a mere plausible defence given accused is not enough to rebut the presumption and the accused has to necessarily disprove the prosecution case by leading cogent evidence that he had no debt or liability to issue the said cheque.

I want to add here that the accused is not expected to rebut the presumption beyond all reasonable doubt. The standard of disproof is only on the level of preponderance of probabilities. The nature of burden has been succinctly laid down by Supreme Court in **Ms Naryan Menon v. State of Kerala & Another reported in AIR 2006 SC 3366**, wherein the Supreme Court held that the initial burden is upon the accused to rebut the presumption under Section 139 of the Act. Only in the event of discharging the said initial burden, the onus shifts to the complainant.

24. The accused in the present case has failed to lead any evidence at all to aid him in the discharge of his onus. He has not been able to rebut the presumption that is raised in favour of the complainant with respect to the existence of legally recoverable debt or liability.

25. In view of the forgoing discussion, the accused has miserably failed in probablizing his defence, even on the scale of preponderance of probabilities. In the present case, accused has not brought on record any written complaint made to the bank official or to the police officials regarding the stolen cheque. The only evidence brought on record by him is the bank official whose testimony does not release the burden of accused.

26. In view of the above, I have no hesitation in holding that the defence as advanced by accused is a sham defence nothing but a cock and bull story to escape from the liability arising from cheque in question. Therefore, in my opinion, the accused has not succeeded in rebutting the presumption of legal



liability even on the scale of preponderance of probabilities.

27. *The complainant has with the aid of evidence led a presumption of legal liability under Section 118 read with Section 139 of N. I. Act, has successfully proved the basis ingredients of offence under section 138 N. I Act.*

28. *Resultantly, the accused **NALI VAMISDHAR** stands convicted for the offence under Section 138 NI Act. Let the convict be heard separately on the quantum of sentence.*

29. *Let a signed copy of the Judgment be supplied to the accused, free of cost, and a copy of the same be placed on record.*

5. In the appeal, the Sessions Court traversed the facts and recorded the following observations: -

13. *The main defence raised by the appellant before Learned Trial Court was that the cheque in question does not bear his signature and further that he had not issued the cheque in question to the complainant. In statement under Section 313 Cr.P.C., he had further stated that the cheque in question was stolen from him and in this regard, he had lodged a complaint with his banker to destroy the same on 17.01.2015.*

14. *There is a statutory presumption against the holder of the cheque that he had received the said cheque, in furtherance of legal liability: During evidence, complainant/respondent was examined as CW1 and in his detailed cross examination, nothing came on record sufficient to discredit his testimony. Regarding availability of the funds, he had stated that he was having arrangement of some cash and remaining amount he had borrowed from some friend who was involved in the same professional as of the complainant/respondent. No any question was asked to the complainant/respondent on behalf of the appellant regarding demonetization at the given time.*

15. *CW1/respondent admitted that he had not mentioned in his ITR of the relevant year regarding giving of loan to the appellant in cash. However, non-mentioning of loan in ITR is not sufficient to prove that he had not given any loan to the accused/appellant or discharging the appellant from his liability under Section 138 of NI Act.*

16. *As far as signatures of the accused upon the cheque in question are concerned, the same was a defence raised by the appellant/accused, therefore, it was the liability of the accused/appellant to prove that the cheque in question does not bear his signature. However, during evidence, the appellant/accused had never produced any evidence to show that signature upon the cheque in question does not belong to him. Cheque return memo Ex.CW1/2 further reveals that the cheque was not returned because of the reason 'signature differs' but has been returned because of other reasons.*

17. *Moreover, perusal of Trial Court Record reveals that an application for comparison of signature of the accused through CFSL was*



moved on behalf of the complainant/respondent and same was opposed on behalf of the appellant by 'fay of his reply dated 07.05.2019. If the appellant had not put his signature upon the cheque in question, then he should not have any reason to oppose the application moved on behalf of the respondent for comparison of the signature. Even during defence evidence, the appellant had not taken any step to prove his defence that he had not signed the cheque in question, through any expert or through his banker. Therefore, there is no merit in the defence raised by the accused that he had not signed the cheque.

18. *It is further contended on behalf of the appellant that the cheque in question was a stolen cheque. However, during defence evidence, the appellant had not proved on record his complaint or missing report before the police or other authorities regarding theft of the cheque. Appellant had examined Dy. Manager, ICICI Bank as DW1 who placed on record certificate Ex. DW111 stating that the cheque in question was destroyed on 17.01.2015. DW1 had not placed on record any document that on whose application or upon which material the said cheque was destroyed. During cross examination, DW1 has even failed to prove his authorisation to appear before the Court to, appear as a witness on behalf of ICICI Bank. He admitted in his cross examination that he cannot say whether the account holder had submitted any copy of police complaint/DDR/FIR/NCR at the time of intimation to the bank that the cheque had been stolen. He further admitted that in ordinary course of business, the cheque is destroyed only if the customer gives request for the same in writing. Appellant/accused had not taken any step to prove on record his any such intimation to the bank in writing through any evidence.*

19. *Therefore, Court finds that ld. Trial Court had rightly came at the conclusion that the appellant/accused had not succeeded in rebutting the presumption of legal liability against him even on the scale of preponderance of probabilities and on the other hand, complainant/respondent had successfully proved necessary ingredients of the offence punishable under Section 138 NI Act against the appellant/accused.*

20. *The impugned judgment has been passed by learned Trial Court with proper reasoning and same does not require any interference by this Court and is accordingly confirmed.*

21. *I have also gone through the order on sentence dated 08.10.2021 whereby the appellant was sentenced to simple imprisonment for one month and to pay a fine of Rs.6,50,000/- which shall be paid to the complainant/respondent as compensation under Section 357 Cr.P.C. within sixty days and in default, the complainant was further ordered to undergo SI for two months.*

22. *Court finds that learned Trial Court had awarded appropriate sentence to the accused/appellant. However, the sentence part is partly modified to the effect that amount of compensation shall be paid to the*



complainant/respondent within sixty days from today i.e. decision of appeal. In default of payment of fine/compensation, the appellant/accused shall further undergo sentence of simple imprisonment of seven days.

23. *The present appeal is hereby dismissed.*

24. *Trial Court record alongwith copy of this judgment be sent back to the Ld. Trial Court.*

25. *Appeal file be consigned to record room after due compliance.*

6. Counsel for the Petitioner argues that the cheque was stolen and the signature forged. If the instrument is not genuine, proceedings under Section 138 NI Act cannot be sustained. He argues that no legally enforceable debt existed: in cross-examination, Respondent No. 2 was unable to state when he first met the Petitioner, when the alleged INR 5,00,000/- loan was advanced, or who was present at the time; none of these particulars find place in the complaint, affidavit evidence, or supporting documents. According to the Petitioner, these gaps go to the root of enforceability and, at the least, render the statutory presumptions under Sections 118(a) and 139 NI Act sufficiently shaken.

7. It is further urged that the complainant failed to establish the mode and source of funds for a cash loan of this magnitude. He alternately stated that part was available in cash and the balance was borrowed from a friend, yet no bank statement, ITR, withdrawal record, or testimony of the alleged friend was produced. The absence of contemporaneous financial material, it is argued, undermines the existence of any subsisting liability and is inconsistent with ordinary prudence for a transaction of INR 5,00,000/-.

8. The counsel further argues that the complainant did not confront DW-1 on signature authorship and did not summon any bank official or handwriting expert to prove the Petitioner's signatures or refute the "stolen cheque" narrative. Instead, the Trial Court undertook a comparison under



Section 73 of the Evidence Act at the stage of final arguments. In the Petitioner's submission, where forgery is specifically pleaded, judicial comparison without expert or bank corroboration was a misstep, and the omission to secure such evidence vitiates the concurrent findings on execution.

9. The Court has considered the submissions noted above. The revisional jurisdiction under Section 397 Cr.P.C. is narrow. The High Court does not, in the absence of perversity, interfere with concurrent findings of fact recorded by the Courts below. It is not for the revisional court to re-analyse or re-interpret the evidence as an appellate court would. Interference is warranted only where the order suffers from a jurisdictional error or reflects perversity or disregard of the settled legal principles.³ The present challenge is examined within this narrow compass.

10. The Petitioner's principal plea is that the cheque in question had been stolen and that the signatures forged. However, despite attributing the alleged theft to one G.S. Rao, he lodged no police complaint and placed no contemporaneous intimation to the bank on record. The absence of a complaint that would ordinarily be expected if a negotiable instrument had been stolen, substantially weakens the defence and deprives it of any foundational footing.

11. On the plea of forged signatures and the "destroyed cheque", the Petitioner examined the Deputy Manager, ICICI Bank, as DW-1 and produced a certificate stating that the cheque was destroyed on 17th January, 2015. DW-1, however, produced no record showing on whose request the cheque was destroyed, no written request from the Petitioner, and no



contemporaneous intimation of theft. In cross-examination, DW-1 accepted that cheques are ordinarily destroyed only on a written request from the customer and he could not say whether any police complaint or written intimation accompanied the alleged request. In the absence of the underlying bank record or authorisation, this testimony does not advance the defence and does not discharge the burden that rests on the accused once statutory presumptions arise.

12. Sections 118(a) and 139 of the NI Act raise a presumption as to consideration and as to the cheque having been issued in discharge of a debt or liability. While the presumption is rebuttable, it cannot be displaced by a bare assertion, a speculative narrative, or a merely plausible defence; the accused must adduce cogent evidence to rebut it.⁴ The accused must bring on record material that, at least on a preponderance of probabilities, renders the non-existence of liability reasonably probable.⁵ On record, the “stolen/forged” narrative is unsupported by any contemporaneous complaint, bank correspondence, or expert opinion. The Trial Court’s recourse to Section 73 of the Evidence Act to compare signatures with admitted writings was within jurisdiction, particularly when the Petitioner opposed expert comparison and did not summon bank officials or an expert. No perversity is shown in that approach.

13. The Petitioner also questions the complainant’s financial capacity on the ground that no ITRs or bank statements were produced to show the source of the loan. While an accused is certainly entitled to rely on such material, or to examine income-tax or bank officials, to rebut the statutory

³ *Bir Singh vs. Mukesh Kumar* (2019) 4 SCC 197.

⁴ *Hiten P Dayal v. Bratindranath Banerjee* (2001) 6 SCC 16.



presumption, mere non-production of these documents by the complainant does not, by itself, negate the presumption or dismantle the complainant's case.⁶ When the complainant's evidence is read as a whole, nothing emerges to indicate that he lacked the means to extend the loan. He consistently stated that part of the amount was arranged from cash available with him and the balance from a friend engaged in the same line of business, and no further cross-examination was directed to challenge this explanation. In these circumstances, the petitioner has not succeeded in dislodging the statutory presumption on this ground. The complainant, on the other hand, has duly proved the essential ingredients of the offence under Section 138 of the N.I. Act.

14. In light of the foregoing discussion, the Court finds no ground to invoke its revisional jurisdiction to interfere with the conviction or the sentence as modified in appeal.

15. The petition is accordingly dismissed along with the pending application(s), if any.

SANJEEV NARULA, J

NOVEMBER 10, 2025/MK

⁵ *Rangappa v. Sri Mohan* (2010) 11 SCC 441; *Rajaram v. Maruthachalam* (2023) 16 SCC 125.

⁶ *Sanjabij Tari v. Kishore S. Borcar & Anr.* 2025 INSC 1158; *S.S. Production & Anr. v. Tr. Pravithran Prasanth* 2024 SCC OnLine 4935.