



\$~28

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

+ CRL.L.P. 101/2015

OM PRAKASH

.....Petitioner

Through: Mr. Amit Kumar, Advocate with
Petitioner.

versus

M/S SANGAM ELECTRONICS & ANR

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

%

04.07.2025

1. The present application filed under Section 419(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (Corresponding to Section 378(4) of the Code of Criminal Procedure, 1973²) seeks leave to appeal against judgment dated 30th September, 2014, passed by the Court of Metropolitan Magistrate (South)-01, NI Act, Saket Courts, New Delhi, dismissing the Appellant's complaint under Section 138 of the Negotiable Instruments Act, 1881³ in CC No. 4386/1 titled as ***Om Prakash v. Sangam Electronics***.

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

2.1. Om Prakash (Appellant), who owns a private business, filed a complaint against Rajiv Tyagi (Respondent No. 2), who is the proprietor of M/s Sangam Electronics (Respondent No. 1), under Section 138 of the NI

¹ "BNSS"

² "CrPC"



Act. The Appellant alleged that Respondent No. 2, a close friend, approached him in need of a friendly loan of INR 30,000 to expand his electronics business. Trusting this request, the Appellant advanced an amount of INR 27,000 in cash, between May and August 2010, on the assurance that the amount would be repaid by November-December 2010. In part discharge of this liability, Respondent No. 2 issued a cheque bearing No. 412716 dated 10th July, 2011, for a sum of INR 6 lakhs drawn on ICICI Bank. Upon presentation, the cheque was dishonoured with the remark “account closed”.

2.2. Consequently, a demand notice under Section 138 of NI Act was issued, calling upon the Respondents to make the payment of the cheque amount. Despite service, there was no response or payment forthcoming, compelling the Appellant to initiate criminal proceedings under Section 138 of the NI Act.

2.3. During trial, the Appellant examined himself as CW-1 and Respondent No. 2 deposed as DW-1. After evaluating the evidence and arguments, the Trial Court held that the Appellant failed to satisfactorily explain the alleged loan transaction. In view of this, the Trial Court acquitted Respondent No. 2, giving him the benefit of doubt.

3. Aggrieved, the Appellant has preferred the present appeal urging the following grounds:

3.1. The Trial Court failed to appreciate that, once the issuance of the cheque and the signature thereon were admitted, the statutory presumption under Section 139 of the NI Act stood triggered. Consequently, the burden shifted upon the Respondents to rebut this presumption by raising a credible

³ “NI Act”



defence, which, according to the Appellant, they have failed to discharge.

3.2. The Trial Court overlooked the uncontroverted fact that he had advanced a sum of INR 27 lakh to the Respondents for the purpose of expanding their electronics business, and that the cheque in question was issued towards partial repayment of this financial liability.

3.3. Additionally, it is argued that the Respondents have sought to deflect liability by introducing the name of their employee, Sunil Singh, alleging that the disputed financial dealings were, in fact, with him. Pertinently, Sunil Singh was never produced as a witness before the Trial Court to substantiate this claim. In the absence of any supporting evidence, the Respondents' defence remains uncorroborated and, in any case, does not sufficiently rebut the statutory presumption under Section 139.

4. The Court has carefully considered the submissions advanced but finds no merit in the grounds urged. The Trial Court has meticulously examined the evidence on record and, in the opinion of this Court, rightly concluded that the presumption in favour of the Complainant stood rebutted on the facts and circumstances of this case. At this juncture, before delving into the merits in detail, it would be apposite to first recapitulate the legal framework governing the statutory presumptions under the NI Act.

5. In proceedings relating to an offence under Section 138 of the NI Act, there exists a statutory presumption in favour of the holder of the cheque that it was issued for the discharge of a legally enforceable debt or liability. Specifically, Section 118(a) of the Act provides that the Court shall presume that a cheque was made or drawn for consideration, while Section 139 mandates a presumption that the cheque was issued towards the discharge of such debt or liability. Once execution of the cheque is admitted or



established, these statutory presumptions operate automatically in favour of the complainant. However, it is equally well-settled that these presumptions are rebuttable. The accused is entitled to demonstrate, by cogent material or circumstances, that the debt or liability did not exist at the time of issuance of the cheque. The presumption does not render the complainant's case infallible; it only shifts the initial burden, which can be discharged by the accused on a balance of probabilities.

6. In order to rebut the presumptions, the accused is not required to conclusively prove a negative fact. Rather, the burden is to raise a probable defence sufficient to create reasonable doubt regarding the existence of a legally enforceable debt or liability. The Supreme Court, in **Rajesh Jain v. Ajay Singh**,⁴ held that the phrase “*unless the contrary is proved*” in Section 139 does not imply that the accused must necessarily prove the negative, *i.e.*, that the instrument was not issued in discharge of any debt or liability. Instead, it suffices if the accused can demonstrate that the existence of such liability is improbable, so as to persuade a prudent person, under the given circumstances, that no such debt existed.

7. In other words, the law permits the accused to rebut the statutory presumption in two distinct ways: first, by leading evidence to directly prove that no debt or liability existed; or second, by relying on circumstantial or inherent inconsistencies in the complainant's case to show, on a preponderance of probabilities, that the debt was not legally enforceable. The Supreme Court, in **Rohitbhai Jivanlal Patel v. State of Gujarat**,⁵ observed that if the accused raises a plausible defence that creates doubts

⁴ (2023) 10 SCC 148.

⁵ (2019) 18 SCC 106.



about the existence of a legally enforceable debt or liability, the burden shifts back to the complainant, and the presumptions under Sections 118 and 139 of the Act no longer benefit him. Therefore, the law does not compel the accused to prove a negative. It merely requires the accused to place before the Court a defence that is credible and probable in the facts of the case.

8. Having regard to the principles noted above, the Court now proceeds to examine the impugned judgment of the Trial Court in detail. The relevant portions are extracted below for ready reference:

“ARGUMENTS

13. *During final arguments, it has been argued by the counsel for complainant that all the ingredients of Section 138 N.I. Act duly complied with and that the accused had issued 4 cheques of Rs. 27 lacs to repay the loan availed by him from the complainant. It was further argued that the friendly relationship between the parties has been established by the complainant and the complainant has not been able to show that he had provided a friendly loan. It was further argued that the complainant has admitted to put his signatures on the cheques in question and the cheques have been issued against the liability and that the alleged defense of the accused does not hold good.*
14. *On the other hand, it has been argued by the counsel for the accused that the accused has never met the complainant prior to the institution of the present case and the accused handed over the impugned cheques alongwith 9 other other blank signed cheques to one Sunil Singh who was his employee, for the purpose of obtaining loan. But the aforesaid cheques were returned back as Sunil singh failed to obtain any such loan on behalf of the accused and from the drawer of the accused these cheque went missing. It is further argued that the reply to the legal demand notice has been sent by the accused wherein the same defense was taken. It is further argued that there was no loan transaction between the parties and that the accused has never issued any cheque in favour of the complainant and that there is no legal debt of liability of the accused towards the complainant.*
15. *From the perusal of the complaint and the documents placed on record it is seen, that the complainant had stated in his cross examination as CW1 that he had paid the money in 4-5 installments to the accused during May to August 2010. In his cross examination the complainant has given a break up of the money paid by him in various installments, the sum total of which comes to Rs.21 lacs. However, the complainant has in his complaint stated that he had provided the accused with a loan of Rs. 27 lacs. The complainant was also unable to prove the date of first or any of the remaining installments. The*



complainant had stated in his cross examination that his annual income for the year 2011-12 was Rs.2,01,500/- and he has been unable to provide the details how he arranged Rs. 27 lacs to be given to the accused towards loan during the period of May to August 2010 when his annual income does not corroborate the loan amount provided to the accused. With respect to the Ex.CW1/D1 which was the complaint made by the complainant at the police station the complainant had provided different details with respect the aforesaid transaction. As per the aforesaid complaint, the accused had provided Rs.28 lacs loan and accused had given 13 blank signed cheques. With respect this complaint the complainant stated that the contents in the aforesaid document are false to the extent to maintaining of Rs.28 lacs and 13 cheques, but stated that there were four cheques and the contents of the cheque were correct. This statement of the accused creates doubts in the veracity of the witness and creates a doubt with respect to the facts of the alleged transaction mentioned in the complaint. It is further seen that no loan agreement of acknowledgment has been placed on record and it is very unlikely that any person would provide a loan of Rs. 27 lacs to 3rd party without taking any acknowledgment or receipt thereof. The complainant has also not been able to show how and when he met the accused and what kind of family relationship suggested by him existed between parties as has been contended.

16. It is further a matter of record that the cheques have been dishonored for the reason account closed. And it has been stated by the accused that account was closed by the bank itself. To corroborate his defense the accused has placed on record three stamp papers Ex. DW/1 to DW/3 which show the alleged transaction between him and Sunil Singh and Ex. DW/1 it specifically states that the loan of Rs. 2 lacs has been taken by Rajiv Tyagi from Sunil Singh on 18.11.2010 for a period of 6 months. It also bears the signature of Sunil Singh and Ex. DW/2 states that against amount of Rs. 2 lacs cheques numbers 31 to 43 drawn on DCB Bank by the accused to Sunil Singh. From the perusal of the cheque in question it is seen that the same are bearing series number 412732, 412733 and 412734 which are of same serial number which have been provided by the accused to Sunil Singh for the purpose of loan.
17. The complainant has not been able to show as to how and when the accused issued to him the cheque in question. It has also seen cheques in question are all dated 27.11.2010, 28.11.2010 and 29.11.2010. A question is raised that, If the accused were to issue three back to back cheques for repayment of loan, why did he not issue one single cheque of Rs. 21 lacs rather than issuing three cheques of Rs. 7 lacs each bearing three consecutive days dates. All these facts and discussions corroborate the defense taken by the accused it is seen that the complainant has unable to show that the impugned cheques were issued against any legal liability nor has complainant able to prove any loan transaction between parties.
18. In the present case, the accused therefore has been able to rebut the



presumption that the impugned cheque was not issued any legal liability of the accused towards complainant.

19. *In view of the above said facts and circumstance, the **accused No. 1 M/s Sangam Electronics and accused No. 2 Rajeev Tyagi** are hereby acquitted of the offence.”*

9. The Trial Court, after a careful appraisal of the evidence, has categorically recorded a finding that the entire foundation of the complaint premised on a cash loan of INR 27 lakhs advanced over four months, remained wholly unsubstantiated. It bears emphasis that INR 27 lakhs is not an insubstantial amount, and when the Complainant’s financial capacity to extend such a large cash loan was seriously challenged, it was incumbent upon him to establish, at the very least, the source of these funds. The Complainant, however, only produced his Income Tax Return⁶ for the financial year 2011–12, which disclosed a gross income of merely INR 2,01,500/-. Crucially, he did not place on record the ITR for the year in which the loan was purportedly advanced. In these circumstances, the only reasonable inference that could be drawn was that the Complainant’s income for the relevant period was broadly comparable to what was disclosed in the subsequent ITR. If, in fact, his income during the period of the alleged loan had been substantially higher, it is but natural that he would have produced the corresponding ITR to fortify his claim and establish his financial capacity. Furthermore, the absence of any written document – whether in the form of a loan agreement, receipt, or even a simple acknowledgment – substantially weakens the Complainant’s case. There is also no reference to any interest arrangement on such a significant sum, which further erodes the credibility of the alleged transaction.

⁶ “ITR”



10. In his cross-examination, the Complainant deposed that he had advanced the loan to Respondent No. 2 in four to five instalments between May and August 2010, with the final instalment purportedly being INR 3 lakh. However, he was unable to specify either the precise amounts or the exact dates of these individual payments. He further admitted that he maintained two to three bank accounts but professed ignorance of their account numbers. Further, he claimed that the details of these transactions were reflected in his passbooks for the period January to December 2010, but candidly admitted, *“I cannot produce the passbooks in respect of my bank accounts wherein the details of transactions for the period January 2009 to December 2010 have been recorded”* (sic). During further cross-examination, the Complainant was confronted with a statement recorded by the police in connection with a complaint lodged by Respondent No. 2. The Complainant admitted, *“The said statement was recorded by the police and the police had required me to sign the same. The signature which appears at appoint A on the said document are mine. The contents of the said statement is false to the extent of mentioned of Rs. 28,00,000/- and 13 cheques. There were four cheques. The remaining contents are correct”* (sic). Such inconsistent and self-contradictory statements erode the credibility of the Complainant’s testimony and cast serious doubt on the veracity of the alleged transaction.

11. The counsel for the Appellant sought to justify his client’s financial capacity by asserting that he was engaged in the business of leasing rooms and that he had let out approximately 70 rooms at a monthly rent of INR 3,000/- each. However, this claim is entirely unconvincing. When confronted with his Income Tax Return for the year 2011–12, which



disclosed a gross annual income of merely INR 2,01,500/-, the Complainant was unable to address this discrepancy. Instead, he evasively responded, “*I cannot answer the said question. My C.A. can answer the same. My CA had assessed my income upon information furnished by me*” (sic). Such an explanation does not demonstrate the Complainant’s inability to substantiate his purported financial capacity to advance INR 27 lakh but also reveals a glaring failure to establish the legitimate source of the alleged funds. On this aspect, it would be apposite to refer to the recent judgment of the Supreme Court in ***Sri Dattatraya v. Sharanappa***,⁷ upholding the order of acquittal on account of contradictions in the Complainant’s statements, his inability to demonstrate the financial capacity to loan the alleged amount, and the lack of acknowledgement of the loan in the Income Tax returns:

*“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 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,***

⁷ Crl. Appeal No. 3257/2024, decided on 7th August, 2024.



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.”

[Emphasis Supplied]

12. Having regard to the aforementioned facts and the legal position laid down in the aforementioned judgments, particularly the Supreme Court’s decision in ***Sri Dattatraya v. Sharanappa*** (supra), this Court finds no infirmity in the conclusion arrived at by the Trial Court. The findings in the impugned judgment are based on a careful and detailed appreciation of the evidence adduced by the parties. The significant contradictions in the Complainant’s statements, his failure to establish his financial capacity to advance such a substantial sum, and the absence of any corresponding disclosure in his income tax returns, together undermine the credibility of his case. In this backdrop, the Trial Court rightly held that the statutory presumption under Section 139 of the NI Act stood rebutted. Consequently, no grounds are made out for interference with the impugned judgment.

13. Dismissed, along with pending application(s), if any.

SANJEEV NARULA, J

JULY 4, 2025

d.negi