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

% ***Date of decision: 2nd May , 2025***

+ **CRL.L.P. 2/2017**

PAWAN KHENDELWAL

Proprietor: M/s. Khandelwal Steel & Timber

553/2, Main Road, Chlrag Delhi

New Delhi - 110 017

.....Petitioner

Through: Ms. Parinita Sehrawat, Advocate

versus

SHANKAR MALLICK

A - 120, 2nd Floor,

DDA Flats, Kalkaji,

New Delhi - 110 019

.....Respondent

Through: Mr. Rahul D. Tyagi, Advocate

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.L.P. 2/2017

1. An Application under Section 378(4) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed on behalf of the Petitioner/Pawan Khandelwal for grant of Leave to Appeal.

2. *Learned counsel for the Appellant* has submitted that despite the accused having admitted issuance of Cheque, the Complaint under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "NI*



Act”) has been dismissed.

3. For the reasons stated in the Petition, the Leave to Appeal is allowed.

CRL.A. _____/2025 (To be numbered by the Registry)

4. Appeal under Section 378(4) Cr.P.C has been filed on behalf of the Appellant/Complainant-Pawan Khandelwal to challenge the Judgment dated 22.08.2016 *vide* which the complaint No.1181/2013 under Section 138 NI Act has been dismissed by learned CMM, Delhi.

5. The case of the Appellant/Complainant was that he was the sole proprietor of M/s Khandelwal Steel & Timber dealing in the business of Steel and Timber products, as per the specifications of the customers. He was dealing with the Respondent/Accused and had been supplying material to him as per the Orders placed by him from time to time. Initially, the Orders were being placed in his personal name but subsequently, he started placing Orders in the name of M/s Saisha Build Co. as its Proprietorship Firm. The bills were raised accordingly and the payments were made by the Respondent either from his personal account or from the account of the Firm.

6. In the month of February, 2013, Order was placed by the Respondent for supply of some Steel Products and the goods worth Rs.3,66,137/- were delivered to him. Against the said supply of goods, the Respondent issued a cheque bearing No. 032189 dated 08.03.2013 drawn on IDBI Bank in the sum of Rs.3,66,137/- drawn from the account of M/s Saisha Build Co. under his signatures. However, the cheque on presentation was dishonoured on 27.05.2013 with the remarks ‘funds insufficient’. A Legal Notice dated 10.06.2013 was issued to the Respondent seeking the payment against



dishonoured cheque. Despite due service of legal notice, the Respondent did not make payment against the impugned cheque.

7. It is further submitted that a false Reply dated 25.06.2013 was given by the Respondent wherein he asserted that the outstanding liability was only of Rs.2,66,137/- as the Complainant had admittedly received a sum of Rs.1,00,000/- through cheque. He further alleged that the impugned cheque had been given as a Security.

8. The Complainant admitted that though he had received Rs.1,00,000/- through the cheque, but it was claimed that the plea of the Respondent was totally concocted and whimsical as the said payment of Rs.1,00,000/- pertained to subsequent Invoice/Supply and did not pertain to the present transactions. The Appellant thus, filed a Complaint under Section 138 NI Act.

9. The Complainant in support of his case appeared as CW-1 and narrated the entire facts as stated in the Complaint. The Respondent in his statement under Section 313 Cr.P.C., set up the defence that he had already paid Rs.1,00,000/- before the service of Legal Notice and there was no outstanding liability as claimed by the Complainant.

10. ***The learned M.M. vide the judgment dated 22.08.2016 noted that the admitted amount of Rs.1,00,000/- having been received by the Complainant, the cheque in the sum of Rs.3,66,137/- was more than the outstanding liability. Consequently, the Complaint under Section 138 NI Act was dismissed.***

11. ***Aggrieved by the dismissal of the Complaint under Section 138 NI Act, present Appeal has been filed.***



12. ***The grounds of challenge*** are that the Respondent had admitted his signatures on the cheque, despite which it has not been appreciated that the onus was on the accused to prove that there was no outstanding liability/debt for the cheque amount. He has merely denied the relevant facts, which is not sufficient to discharge the onus on the Respondent in terms of the presumptions against him under Sections 139 and 118 NI Act. The onus was on the Respondent to show the circumstances in which the cheque had been issued. Though defence had been set up in his response to Notice under Section 251 Cr.P.C. as well as 313 Cr.P.C. that he had issued a blank Security Cheque which was presented without his instructions, but no evidence whatsoever has been brought on record by the Respondent to substantiate the same.

13. The Appellant has further contented that the learned MM has wrongly placed reliance on M/s Alliance Infrastructure Projects Pvt. Ltd and Ors. vs. Vinay Mittal in CrI. M.C. No. 2224/2009.

14. Reliance has been placed by the Appellant on Dhanvantrai Balwantrai Desai vs. State of Maharashtra, 1963, SCR Supp (1) 485 wherein Apex Court had observed that the presumption of law cannot be successfully rebutted by merely raising a probability, however there must be reasonable facts raising a probability of reversing the fact, which is presumed.

15. The reliance has also been placed on Rangappa vs. Sri Mohan, AIR 2010 SC 1898 and Goa Plast (Pvt.) Ltd. vs. Chico Ursula D'Souza, (2003) 3 SCC 232.

16. The Appellant has contended that the Respondent has failed to bring



on record any material to show that the Cheque had not been issued in discharge of outstanding liability. The Ledger Accounts maintained manually by the Appellant, were duly proved. The learned Trial Court erroneously did not consider the Ledger Account on the ground that it was not supported by the certificate under Section 65B of the Indian Evidence Act, 1872 (*hereinafter referred to as the "Evidence Act"*). However, the learned MM has passed the judgment in a casual and mechanical manner without considering the law. The Statement of Account is not a computer generated Ledger Account, but was merely a simple printout of the Ledger Account maintained by the Appellant in due course of business, which does not require Certificate under Section 65B of the Evidence Act. The Ledger Account clearly proves that the payment of Rs.1,00,000/- received from the Respondent was towards a different transaction and did not pertain to the transaction in question.

17. It is submitted that the Respondent failed to discharge the onus and did not produce any material on record. Therefore, the impugned judgment is liable to be set aside and the Respondent be convicted.

18. **No Formal Reply** has been filed by the Respondent.

19. **Submissions heard and record perused.**

20. The case of the Complainant was that he was the sole proprietor of M/s Khandelwal Steel and Timber and was dealing in the business of sale/purchase of steel and timber products. He had been supplying the goods as per the Invoices to the Respondent from time to time and the goods were being delivered at the sites as per the instructions of the Respondent. His claim was that a cheque dated 08.03.2013 in the sum of Rs.3,66,137/- was



issued by Shankar Mallick/Respondent towards the outstanding liabilities.

21. The Respondent, however, while admitting that he was having business dealing with the Complainant, took a plea that a blank signed cheque had been given by him to the Complainant as a security cheque against the business dealings. He had also given a cheque dated 19.03.2013 of Rs.1,00,000/- to the Complainant, which was duly encashed on 20.03.2013. It is submitted that even as per the Complainant, the outstanding liability was of Rs.3,66,137/- but on payment of Rs.1,00,000/-, cheque amount did not correspond to the existing liability.

22. ***The first aspect which merits consideration is*** the contention of the Appellant, that having admitted his signatures on the impugned cheque Ex.CW-1/A, the presumption under Section 139 read with Section 118 NI Act arises against the Respondent and the onus was on him to establish that there was no existing debt or liability at the time when the cheque was presented for encashment.

23. It is a settled proposition of law that once the signatures on the cheque is admitted, the reverse onus is on the Respondent but the same may be discharged either by adducing his own evidence or may also establish his defence from the Evidence Act or documents relied by the Complainant.

Section 139 of the NI Act is as under:

“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.”

24. In Dashrath Rupsingh Rathod vs. State of Maharashtra (2014) 9 SCC



129, it was held that one of the distinct condition precedent, which must be satisfied before the dishonour of a cheque can constitute an offence, is that ***the cheque amount is in discharge of a debt or liability.***

25. In Bir Singh vs. Mukesh Kumar (2019) 4 SCC 197, after discussing the settled line of precedent of the Apex Court on this issue, a two-Judge Bench held:

33. *“A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*

34. *If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.”*

Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.(emphasis supplied)

26. The above view was recently reiterated by a three-Judge Bench of the Apex Court in Kalamani Tex vs. P. Balasubramanian (2021) 5 SCC 283



wherein it was held that a drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability. The presumption arises under Section 139.

27. In Anss Rajashekar vs. Augustus Jeba Ananth (2020) 15 SCC 348, a two Judge Bench reiterated the decision of the three- Judge Bench of this Court in Rangappa vs. Sri Mohan (2010) 11 SCC 441 on the presumption under Section 139 of the NI Act. The court held: Section 139 of the Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it, in discharge, in whole or in part, of a debt, or liability. The expression “*unless the contrary is proved*” indicates that the presumption under Section 139 of the Act is rebuttable. Terming this as an example of a “reverse onus clause” the three-Judge Bench in Rangappa (supra) held that in determining whether the presumption has been rebutted, the test of proportionality must guide the determination. The standard of proof for rebuttal of the presumption under Section 139 of the Act is guided by a preponderance of probabilities. This Court held thus:

“28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities.”

28. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the aforesaid judgements, the



accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

29. However, the manner in which such presumptions are raised, as provided under the Indian Evidence Act, 1872, as tools for proving the issues of fact and law, were interpreted by the Hon'ble Apex Court in Kali Ram vs. State of Himachal Pradesh (1973) 2 SCC 808, wherein it was noted that one of the cardinal principles in administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. In certain cases, statutory presumptions arise regarding the guilt of the accused, but even in those cases, it is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown to be existing, can the statutory presumption be drawn and accused asked to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.

30. In the case of M. S. Narayana Menon vs . State of Kerala (2006) 6 SCC 39, the Hon'ble Apex Court, while making a reference to the aforesaid



Judgements, observed that it is for the Complainant to first establish the existence of a debt for which the impugned cheques are issued in order to be successful in a complaint under Section 138 N.I. Act. If the existence of debt in respect of large part of the amount is not proved, then the presumption cannot be drawn and the Complaint under Section 138 N.I. Act is liable to be dismissed.

31. In the present case, the Complainant to show that there was an outstanding liability of Rs.3,66,137/-, has produced the sole document, which is his Ledger Account Ex.CW-1/7. Admittedly, no Certificate under Section 65B of the Evidence Act was annexed, in support of it.

32. It has been contended on behalf of the Appellant that the Ledger Account was being maintained manually and what has been placed on record is only a computer generated printout of the Ledger Account, there was no requirement of it being supported with a Certificate under Section 65B of the Evidence Act.

33. The bare perusal of the ledger statement Ex.CW-1/7, makes it abundantly clear that the accounts were being maintained on computer and the printout was of the Ledger Accounts so maintained on the Computer, and were not a manual Record. It was required to be proved by producing the certificate under Section 65B of the Evidence Act as has been held in the case of Anvar P.V. vs. P.K. Bhasheer, 2014 (10) SCC 473.

34. The learned M.M. has rightly rejected the Ledger Account for it not being proved in accordance with law by producing the certificate under Section 65B of the Evidence Act.

35. ***The second aspect*** is that mere production of Ledger Account is not



sufficient; the entries made therein must be established by the corresponding documents. Reference be made to the observations of the Apex Court in the case of CBI vs. V.C. Shukla AIR 1998 SC 1406 that the Ledger Account with its entries cannot be approved of the transactions unless the entries are authenticated by independent evidence to establish their trustworthiness.

36. Pertinently, the Complainant in his cross-examination has admitted that the delivery of goods was as per the Invoices, despite which no Invoice or delivery receipt has admittedly been placed on record. The perusal of Ledger Account also has reference to the detailed Invoices, which have admittedly not produced. Even if Ledger Account is considered, then too it does not help the Complainant, as no Invoices which were admittedly issued have been filed, to authenticate the entries of the Ledger Account.

37. The best way of proving the authenticity of the entries made in the Ledger Account was to produce the corresponding Invoices, which Appellant has admittedly failed to produce.

38. Once, the ledger account is held to be an inadmissible document and its entries also not proved, what remains to be considered is ***whether from the oral testimony of the Complainant, he has been able to prove that there was an existing liability of the cheque amount on the day it was issued and presented to the bank.***

39. The Appellant has admitted that a second cheque dated 19.03.2013 in the sum of Rs.1,00,000/- had been issued in his favour by the Respondent, which was duly encashed on 20.03.2013. The outstanding liability claimed to be as on the date of issue of cheque dated 08.03.2013 was of Rs.3,66,137/- but having received part amount of Rs.1,00,000/- subsequently i.e. on



20.03.2013, the outstanding liability got reduced to Rs.2,66,137/-. ***However, it is evident that the cheque amount was more than the liability outstanding at the time of its presentation.***

40. The Appellant has himself admitted that the outstanding liability of Rs.3,66,137/- got reduced by Rs.1,00,000/- on account of part payment made by the Appellant. ***The cheque presented was clearly not for the remaining amount in discharge of the said debt or liability, but was in fact of amount more than the existing liability. Hence, the prerequisite of Section 138 NI Act of the cheque being part or of the entire existing liability, is not satisfied.***

41. In the light of aforesaid discussion, it is held that the learned M.M. has rightly dismissed the Complaint under Section 138 NI Act.

42. There is no merit in the present Appeal, which is hereby dismissed. Pending Applications are accordingly, disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 2, 2025

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