IN THE COURT OF SH. PITAMBER DUTT
PRINCIPAL DISTRICT AND SESSIONS JUDGE,
PATIALA HOUSE COURTS, NEW DELHI DISTRICT

Criminal Appeal No. 259/2023
CNR No. DLND01-007851-2023

Adarsh Behl
S/o. Late Sh. Madhusudan Behal
R/o. House No. 52, Road No.43,
West Punjabi Bagh,
New Delhi-110026 ……….Appellant

Versus

1. The State

2. Mohinder Goel (since deceased)
Through legal representatives

(a) Smt. Rashmi Goel
W/o. Late Sh. Mohinder Goel,
R/o. G-89, Naraina Vihar,
New Delhi-110028

(b) Sh. Bharat Goel
S/o. Late Sh. Mohinder Goel,
R/o. G-89, Naraina Vihar,
New Delhi-110028
Through Attorney Smt. Rashmi Goel ………...Respondents

Date of Institution	:	14.09.2023
Arguments heard on	:	05.06.2026
Date of Order	:	09.06.2026

Appearances:-
Mohd. Tayyab, Ld. Counsel for the appellant.
Sh. Ranjeev Kumar, Ld. Counsel for respondent No.2.

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ORDER

1. Vide this order, I shall decide the appeal filed by the appellant under Section 374 of Cr.PC against the judgment and order on sentence dated 19.07.2023 passed by Ld. Trial court whereby the appellant was convicted and sentenced for the offence punishable U/s.138 of Negotiable Instruments Act, 1881, simple imprisonment for 06 months and to pay compensation of Rs.14,00,000/- (Rupees Fourteen Lacs only) to the complainant/respondent No.2 and in case of default in payment of compensation, further sentence of one month simple imprisonment.

2. Mohd. Tayyab, Ld. Counsel for the appellant has contended that Ld. Magistrate did not provide the appellant/accused adequate opportunity to lead the defence evidence. He further contended that appellant was unaware of the intricacies of law as he was a doctor by profession. He further contended that before Criminal Revision Petition No. 514/2023 could be decided by Hon'ble Court, Ld. Magistrate passed the order on sentence and convicted the appellant/accused U/s. 138 of Negotiable Instruments Act, 1881. He further contended that counsel for the appellant/accused was not present in the court on 28.06.2023 when the matter was first called as he was busy in another court and in the meantime, statement of accused U/s. 313 Cr.PC was recorded by Ld. Magistrate. He further contended

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that when counsel for the appellant/accused reached there, he was informed that defence evidence is closed. He further contended that Ld. Magistrate has erred in concluding that there was no challenge to the authenticity of the loan agreement at the time of tendering of documents during the cross-examination of the complainant/respondent No.2. Ld. Counsel for the appellant prayed that appeal may be allowed and impugned order dated 19.07.2023 may be set aside.

3. Sh. Ranjeev Kumar, Ld. Counsel for respondent No.2 has contended that the impugned order dated 19.07.2023 has been passed by Ld. Trial court after considering the submissions made by both the parties and going through the record. He further contended that appellant/accused was friend of respondent No.2/complainant and requested him for friendly loan of Rs.10,00,000/- in May, 2018 and had made commitment to repay the said friendly loan on or before 31.12.2018. On his request, respondent No.2/complainant has given friendly loan to the appellant/accused for Rs.10,00,000/- through NEFT from his bank account. He further contended that appellant/accused had entered into a loan agreement dated 16.02.2019 with respondent No.2/complainant. He further contended that appellant/accused issued a cheque bearing No. 000614 dated 31.12.2018 for Rs.10,00,000/- drawn on HDFC bank, Naraina Vihar Branch, New Delhi in favour of respondent

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No.2/complainant. He further contended that said cheque was dishonoured on presentation on 28.03.2019. He further contended that legal demand notice dated 19.04.2019 was sent by respondent No.2/complainant vide speed post dated 23.04.2019 to the appellant/accused calling upon him to pay the cheque amount of Rs.10,00,000/- within 15 days from the date of service of legal demand notice. Ld. Counsel for respondent No.2 prayed that appeal filed by the appellant may be dismissed.

4. I have heard Ld. Counsel for the appellant, Ld. Counsel for respondent No.2, perused the appeal, impugned order as well as record. Perusal of the above shows that the respondent/complainant filed a complaint U/s. 138 of Negotiable Instruments Act, 1881 on the ground that he advanced a loan of Rs.10,00,000/- (Rupees Ten Lacs only) to the appellant/accused on 30.05.2018 through NEFT from his account bearing No.644010100006491, Axis Bank, Naraina Vihar Branch, New Delhi.

5. The accused had agreed to repay the said loan on or before 31.12.2018. However, in the last week of December 2018, when the complainant approached to the accused for repayment of the loan amount, accused had issued a cheque bearing No. 000614 dated 31.12.2018 for Rs.10,00,000/- (Rupees Ten Lacs only) drawn on HDFC Bank, Naraina

Vihar Branch, New Delhi and made a request to present the said cheque for encashment in the last week of March, 2019.

6. The accused had also entered into a loan agreement dated 16.02.2019 regarding aforesaid loan liability.

7. The complainant has further alleged that he presented the said cheque as per the request of the accused for encashment with his banker on 27.03.2019 but, the said cheque was dishonoured on presentation on 28.03.2019 with the remark 'Funds Insufficient'. The complainant called upon the accused/appellant vide legal notice dated 19.04.2019, which was sent through speed post to make the payment within 15 days but despite the service of the legal notice, the appellant/accused failed to pay the said amount. On that basis, a complaint U/s. 138 of Negotiable Instruments Act, 1881 was filed.

8. After filing the complaint, the complainant led pre-summoning evidence. Thereafter, the Ld. Trial court issued summon to the accused. who appeared before the court and notice U/s.251 of Cr.PC was framed. After that, the complainant was again examined and cross-examined by Ld. Counsel for the accused.

9. Statement of the accused U/s.313 of Cr.PC read with Section 281 of Cr.PC was recorded. The appellant/accused did not lead any evidence. The Ld. Trial court heard the final

arguments and passed the impugned judgment and order on sentence dated 19.07.2023.

10. A perusal of record shows that complainant/respondent filed a complaint U/s. 138 of Negotiable Instruments Act, 1881 on the ground that respondent No.2/complainant had advanced a loan of Rs.10,00,000/- (Rupees Ten Lacs only) to the appellant/accused through NEFT. In order to discharge the said liability, the accused issued cheque bearing No.000614 and requested to present the said cheque in March, 2019. However, when the said cheque was presented as per the request of the accused, the said cheque was dishonoured on presentation. The appellant was called upon to make the payment within 15 days from the date of receipt of the said legal notice but despite the service of the legal notice, the accused failed to pay the amount.

11. Ld. Counsel for the appellant has contended that Ld. Trial court has not provided adequate opportunity to the appellant/accused to lead defence evidence as he was a doctor and was ignorant about the intricacies of the law and his statement U/s.313 was recorded in the absence of the counsel. As per Ld. Counsel for the appellant, the due opportunity for leading defence evidence was not afforded to the appellant.

12. The said plea of the appellant is, however, not sustainable for the simple reason that the statement of the accused U/s.313

of Cr.PC read with Section 281 of Cr.PC was recorded on 28.06.2023.

13. A perusal of the order-sheet of 28.06.2023 clearly shows that Ld. Counsel for the accused, Sh. Luqman Hassan, was present in the court along with the accused and in his presence, statement U/s. 313 of Cr.PC was recorded.

14. Ld. Counsel for the accused filed an application U/s.243 read with Section 311A of Cr.PC to take the specimen signatures of the accused and get it compared with the purported loan agreement and sent it for comparison to CFSL. The said application filed by the accused was, however, dismissed against which the appellant preferred criminal revision petition No.514/2023. However, the said revision was dismissed for non-prosecution on 26.07.2023. After that, the appellant did not take any further action.

15. It is relevant to mention that the accused in his statement recorded U/s.313 of Cr.PC has categorically admitted that loan agreement Ex.CW-1/2 was executed between him and the complainant. When the accused had admitted the execution of loan agreement Ex.CW-1/2 in his statement recorded U/s.313 of Cr.PC, then there was no occasion for sending the said loan agreement to CFSL for the purpose of verification of the signatures of the accused on the said document.

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16. The Ld. Trial court has thus, rightly discarded the said request made by the appellant vide his application U/s.243 read with Section 311A of Cr.PC, which was dismissed vide order dated 28.06.2023.

17. A perusal of the record reveals that the appellant/accused has not disputed his liability at the time of framing of notice U/s.251 of Cr.PC. The accused has admitted that he had taken a friendly loan of Rs.50,00,000/- (Rupees Fifty Lacs only) from the complainant in around year 2018-19. The rate of interest on the said loan was 2% per month. As per him, he had made regular payment to the complainant for a period of two years of approximately Rs.25,00,000/- (Rupees Twenty Five Lacs only) and, thereafter, his hospital was got closed, due to which, he suffered set back in the business.

18. The appellant/accused has further stated that the cheque in question was issued to the complainant at the time of taking the abovesaid loan. He admitted his signatures on the cheque and claimed that rest of the particulars were not filled in his handwriting.

19. The appellant/accused further stated that the said cheque was issued as security. He has admitted his liability to the extent of Rs.25,00,000/- (Rupees Twenty Five Lacs only).

20. The statement made by the accused at the time of framing of notice U/s.251 of Cr.PC thus, clearly reveals that the accused has admitted the transaction between him and the

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complainant. He also admitted that the cheque in question bears his signatures. He claimed that the cheque was issued as a security and rest of the particulars were not filled in his handwriting. He also claimed that his liability is to pay Rs.25,00,000/-.

21. The onus to prove the fact that the cheque in question was issued as security cheque and the accused is only liable to pay Rs.25,00,000/- is upon the appellant. However, appellant/accused has not led any evidence on record to discharge the said obligation.

22. It is relevant to mention that before filing the present complaint, the complainant had issued a legal demand notice Ex.CW-1/6, whereby complainant called upon the accused to make payment of Rs.10,00,000/- (Rupees Ten Lacs only) within 15 days from the date of service of the said legal notice, failing which, he shall be constrained to take appropriate legal remedy against him.

23. The said legal notice was sent through speed post at the correct address of appellant/accused vide receipt, which is Ex.CW-1/7.

24. The appellant, though, has not disputed the genuineness of the legal notice in his statement recorded U/s.294 of Cr.PC, however, in his statement recorded U/s.313 of Cr.PC, he claimed that he has not received the legal demand notice. He,

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however, admitted that the address mentioned on the demand notice is correct.

25. When the legal notice Ex.CW-1/6 was sent at the correct address of the accused through speed post, the presumption of due service arises, which can be dislodged by the appellant/accused by leading sufficient evidence to show that due process of transmission was disrupted and legal notice was not served upon him.

26. The appellant has, however, not led any evidence, whatsoever, in this regard.

27. A perusal of the material placed on record clearly revealed that appellant has not disputed that he had taken a loan from the respondent. He has also not disputed the execution of the loan agreement Ex.CW-1/2, which clearly stipulates that the appellant was in a need of money and for that he had taken a friendly loan of Rs.10,00,000/- (Rupees Ten Lacs only) through NEFT from the respondent on 30.05.2018.

28. The said loan agreement also clearly stipulates that the appellant agreed to repay the said loan in the last week of December, 2018 and for the payment of Rs.10,00,000/- (Rupees Ten Lacs only), he had issued a cheque bearing No.000614 dated 31.12.2018 and had requested the appellant/accused not to present the said cheque till last week of March, 2019.

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29. The said loan agreement clearly establish the case of the complainant.

30. The appellant has not disputed execution of cheque Ex.CW-1/3, which was dishonoured on presentation vide memo Ex.CW-1/4. The appellant has also not disputed that the legal notice Ex.CW-1/6 was sent at his correct address.

31. The appellant has thus, not disputed anything in the instant case.

32. The Ld. trial Court has considered each and every aspect of this case very minutely and has rightly passed the judgment and order on sentence dated 19.07.2023 in accordance with law and I find no legal infirmity in the same.

33. In view of the above facts and circumstances, I am of the considered view that Ld. Trial court has passed a well reasoned judgment and order on sentence dated 19.07.2023 and I find no infirmity in the same. Accordingly, the appeal filed by the appellant against the judgment and order on sentence dated 19.07.2023 is dismissed.

34. The Trial Court Record be sent back along with copy of this Order. Appeal file be consigned to record room after due compliance.

Announced in the open Court
Today i.e. on 09.06.2026

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(PITAMBER DUTT)
Principal District & Sessions Judge,
New Delhi District, Patiala House Courts,
New Delhi.