IN THE COURT OF MS. DEEPTI DEVESH
ADDITIONAL SESSIONS JUDGE, SPL.FAST TRACK COURT
PATIALA HOUSE COURTS, NEW, DELHI

Criminal Appeal No.274/2024
CNR No. DLND01-009136-2024

M/s M.D Publications & Anr.
Through its Prop. Ms. Nisha

Ms. Nisha
D/o Late Sh.Manu Dev
R/o C-45, Subhash Park,
Uttam Nagar,
New Delhi – 110059 ….......**Appellant**

Versus

Sheela Dahiya
Through her SPA Holder
Mr. Om Prakash Dahiya
R/o RZF-659/6, Gali no.24A,
Sadh Nagar – II, Palam colony,
New Delhi - 110045 …......**Respondent**

-:JUDGMENT:-

1. The present appeal has been preferred by the appellant (accused before Ld. Trial Court) against the impugned judgment dated 17.08.2024 and order on sentence dated 14.10.2024 of Ld. JMFC - 01, NDD, Patiala House Courts, passed in complaint case u/s 138 NI Act. By way of the said impugned judgment, the appellant was convicted of offence punishable u/s 138 NI Act and sentenced to simple imprisonment for a period of one year and payment of fine of Rs.3,40,000/-, payable as compensation to the respondent (complainant before Ld. Trial Court), or in default of which to undergo further simple imprisonment for a period of six months. For the sake of convenience, both parties shall be referred as their original position before the Ld. Trial Court, i.e. as complainant and accused.

2. The facts relevant for deciding the present appeal, in brief are as follows. The complainant's daughter and accused were known to each other, as accused was tuition teacher for the complainant's grand child. At the request of accused, complainant and other family members extended multiple friendly loans to the accused. The complainant gave friendly loan in cash amounts of Rs.45000/-, Rs.45000/- and Rs.80,000/- on 25.09.2017. The accused gave three cheques in question for payment of the said loan amount. The complainant presented cheques bearing no.000016, 000019 and 000104, dated 10.01.2018, 10.01.2018 and 12.03.2018 respectively, for Rs.45,000/-, Rs,45,000/- and Rs.80,000/- respectively, issued and signed by the accused, which cheques were dishonored for the reason '*Funds Insufficient*' vide memos dated 23.02.2018, 23.02.2018 and 21.03.2018 respectively. Thereafter, legal notice was issued to the accused dated 23.03.2018. Thereafter, the accused failed to make payment to complainant and the complaint was filed before Ld. Trial Court.

3. After recording of pre-summoning evidence, the Ld. Trial Court summoned accused vide order dated 28.06.2018. Notice u/s 251 Cr.P.C was given to accused on 05.02.2020, in which she pleaded not guilty and stated that the cheques in question were given for security. Oral application u/s 145(2) NI Act was allowed on 05.02.2020 and permission to cross-examine complainant was granted. Attorney Holder of complainant was cross-examined and discharged on 31.05.2022 and complainant's evidence was also closed. Statement of accused u/s 313 Cr.P.C was recorded on 24.06.2022 in which she stated that she wants to lead defence evidence. She also disclosed her defense again that the cheques in question were security cheques and misused by the complainant. Accused examined herself as DW1, cross-examined and discharged on 06.04.2024. Defense evidence was also closed. Thereafter, final arguments were addressed and the impugned judgment and order on sentence were passed against the accused.

4. Now, the accused has filed the present appeal challenging the impugned judgment and order on sentence on the following grounds:

> a) that the Ld. Trial Court has failed to appreciate that the cheques in question were security cheques and misused by complainant.
> b) that the Ld. Trial court failed to appreciate that the cheques in question were given as blank signed cheques and complainant has filled the remaining details on her own, without any liability of the accused.
> c) that the Ld. Trial court failed to appreciate that accused has already repaid the maximum loan amount.
> d) that the Ld. Trial court failed to appreciate that accused is responsible for her old age mother as there is nobody else in her family to take care of her and also that business of accused is already closed due to huge losses.

5. The accused has reiterated the above said averments in her appeal at the time of advancing oral arguments in the present appeal.

6. Per contra, the complainant has challenged the grounds raised in the present appeal. No written reply to the present appeal has been filed, but oral arguments have been advanced on behalf of complainant. It has been submitted by the complainant that all the necessary ingredients of the alleged offence have been satisfied by the complainant during trial and the accused has miserably failed to rebut the presumptions in favor of the complainant.

7. Arguments have been heard. Record has been perused. Trial Court record was also summoned and same has been perused.

8. The accused has faced trial for offence punishable u/s 138 NI Act. The essential ingredients for offence punishable u/s 138 NI Act are as follows -

> a. that a cheque was drawn in favor of complainant by the accused,
> b. the cheque drawn was in discharge of whole or part of legally enforceable debt or liability,
> c. the cheque so drawn was presented for encashment by the complainant at his bank within period of its validity or three months, whichever is earlier,
> d. the cheque so presented was returned dishonored as unpaid due to specific reasons informed by the bank,
> e. that within 30 days of dishonor of cheque, legal notice in writing was issued by the complainant to the accused calling for payment of the dishonored cheque,
> f. that accused failed to make payment of the cheque amount within 15 days of receipt of legal notice,
> g. that after failure of accused to make payment of cheque amount within 15 days of receipt of legal notice, within 30 days complainant presented the complaint u/s 138 NI Act before the Ld. Trial Court.

9. Apart from the necessary ingredients of offence punishable u/s 138 NI Act, the presumptions attached to the said offence under the provisions of section 118 and 139 NI Act are also pertinent to be noted. As per the presumption in favor of complainant, once the complainant establishes that the cheque in question was executed by the accused in his favor, it would be presumed under law that the cheque in question was drawn for consideration and the complainant received it in discharge of debt or liability. The nature of presumption u/s 118 and 139 NI Act is rebuttable and the said presumptions are not evidence in favor of the complainant, but aids in establishing the prima facie case for the complainant. In this regard, reliance is placed upon the judgment of

Hon'ble Supreme Court of India in **Hiten P. Dalal Vs. Bratindranath Bannerjee (2001)' 6 SCC 16.** Furthermore, both the said presumptions as contained in section 118 and 139 of NI Act are raised in favor of complainant, when the accused does not dispute the signatures on the cheques in question. In this regard, reliance is placed upon the observations on Hon'ble Supreme Court of India in **K. Bhaskaran Vs. Shankaran Vaidhyan Balan 1999 (4) RCR (Criminal) 309,** wherein it has been held -

> *"as the signatures in the cheque is admitted to be that of the accused, the presumption envisaged in section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date when the cheque bears. Section 139 of the Act enjoins on the court to presume that the holder of the cheque received it for the discharge of any debt or liability."*

Reliance is also placed upon the observations of Hon'ble Supreme Court in ***Rangappa Vs. Mohan AIR 2010 SC 1989*** in this regard.

10. The Attorney Holder of complainant has examined himself as the sole witness during trial. He relied upon the following documents to establish all the necessary ingredients for offence punishable u/s 138 NI Act:

S.NO.	DOCUMENTS	EXHIBITS
1.	Evidentiary affidavit of Attorney Holder of complainant Photocopy of the Identity and the Residence Proof of the complainant and SPA Holder	**Ex.CW1/X**
2.	Photocopy of the Identity and the Residence Proof of the complainant and SPA Holder	**Ex.CW1/1(Colly.)**
3.	Special Power of Attorney dated 05.05.2018	**Ex.CW1/1A**
4.	Copy of passbook of the complainant	**Ex.CW1/2 (colly.)**

	bank account.	
5.	Original cheque bearing no.16, its return memo dated 18.01.2018 and 23.02.2018, original cheque bearing no.19, its return memo dated 18.01.2018 and 23.02.2018 and original cheque bearing no.104 and its return memo dated 21.03.2018.	**Ex.CW1/3 (colly.)**
6.	The copy of messages	**Ex.CW1/4 (colly.)**
7.	CD containing call recordings	**Ex.CW1/4A**
8.	Copy of Legal Notice, speed post receipt and proof of delivery.	**Ex.CW1/5, Ex.CW1/6 and Ex.CW1/7 respectively.**

Accused had examined herself as defence witness. She has relied upon the following documents in her evidence.

S.NO.	DOCUMENTS	EXHIBITS
1.	Loan agreement dated 25.10.2017	**Ex.DW1/A**
2.	Cheque no.102 used by the complainant in a case filed in the court of Ld. ADJ, Dwarka court.	**Ex.DW1/B**
3.	Memo of parties of the Dwarka court	**Ex.DW1/C**

11. No substantive ground has been raised in the present appeal to challenge the impugned judgment, which had not been raised before the Ld. Trial Court. The impugned judgment is a well reasoned judgment and it is well established that except in compelling circumstances, the findings of fact given by the Ld. Trial Court can not interfered with in normal circumstances. Herein the accused is not disputing that there exists loan transactions between the parties. However, it is the defence that the loan transaction is only for Rs.15,00,000/- for which document Ex.DW1/A was duly executed between the parties. Apart from the said loan transaction, there are no other loan transactions between the parties. However, the same remains mere bald averrments of the accused as no evidence has been produced to show that no such cash loan transaction of Rs.1,80,000/- had ever taken place. In fact, the accused has not even questioned whether the attorney holder has been duly appointed or is competent to depose in the case when the alleged loan transaction is between his wife and the accused. Be that as it may, when evidence has been given by the complainant through Attorney Holder, it is the duty of the court also to examine whether the Attorney Holder had the necessary competence on the basis of his own personal knowledge to depose. In the instant case, in the power of attorney Ex.CW1/1A, it is clearly mentioned that the Attorney Holder has personal knowledge as the transaction had taken place in his presence. Therefore, it is clear that the Attorney Holder was competent to depose on the basis of his personal knowledge of the facts of the case. Furthermore, no challenge has been raised by the accused as to the financial capacity of the complainant to extend cash loan of Rs.1,80,000/-. It is pertinent to note that the question of whether cash payment of huge amounts can be given as loan has been held to be relevant for the purpose of tax laws, but the same can not be a ground to challenge proceedings u/s 138 NI Act. Reliance is placed upon the judgment of **Hon'ble Supreme Court** in "**Sanjabij Tari v. Kishore C.Borcar Crl. Appeal No.1755 of 2010 decided on 25.09.2025".**

12. Furthermore, the claim that accused had issued the cheques in question only as security, has not been proved in evidence by the accused. In cross examination of Attorney Holder, he has admitted that approximately ten cheques as security were taken from the accused but no question has been put to the Attorney Holder that the cheques in question of this case, were also part of the said ten cheques taken as security. Be that as it may, it is well settled position that a security cheque is not absolutely incapable of attracting offence punishable u/s 138 NI Act. When the payment becomes due, for which security cheque had been given, and due payment has not been made by the due date and no other instrument had been issued for the payment by due date, then, in such scenario, the purpose of security cheque given previously is fulfilled and it becomes ripe for presentation in order to clear the pending due payment. In the instant case also, it is not the case of accused that the cheques were presented even before payment was due. Reliance is placed upon the judgment of Hon'ble Supreme Court in "**Sripathi Singh v. State of Jharkhand 2021 SCC Online SC1002**".

13. With respect to presumptions in favor of complainant for offence punishable u/s 138 NI Act and the manner in which the presumption can be rebutted by accused and how onus shifts like a pendulum in the trial u/s 138 NI Act has been discussed at length in the judgment of ***N. Vijaykumar Vs. Vishwanath Rao N. in Crl. Appeal No. 5305/2024 decided on 22.04.2025 by Hon'ble Supreme Court of India.*** In the instant case, there has been no occasion during trial, as reflected by record that the onus shifted upon the complainant at any point of time to prove its case against the accused and thus the presumptions, always remained in favor of the complainant.

14. Thus, in view of the above discussion, it is clear that the complainant has established its case against the accused and the present appeal against judgment dated 17.08.2024 is devoid of any merits.

15. However, it is pertinent to note that the impugned order on sentence does appear to be harsh and appears to have been passed without considering the submissions made on behalf of the accused before the Ld. Trial Court. The Ld. Trial Court has appeared to have been swayed to give harsh punishment on account of elements of breach of trust in the case. However, question of Criminal Breach of Trust in this case was not to be adjudicated upon by the Ld. Trial Court and the considerations for sentencing were to be limited to the facts relevant for offence punishable u/s 138 NI Act. The Ld. Trial Court has noted aggravating circumstance of breaching the trust of complainant's daughter, who was never even cited as a witness for complainant and never appeared before court to depose as a witness. Thus, it appears that impugned order on sentence has been passed after taking into consideration some extraneous circumstances also. It has also been erroneously recorded by Ld. Trial Court that no mitigating circumstance was brought to its notice, despite noting the submission of the accused that she is looking after her family and her mother is dependent upon her. Similar submissions have been made before this court also. No doubt there is presence of aggravating circumstance of multiple litigations between the same parties for recovery of huge loan amount, but the facts and circumstances of other litigations can not be a ground to give enhanced punishment than necessary to the accused.

16. In view of the above discussion, the impugned order on sentence dated 14.10.2024 is modified to the extent that accused shall pay fine amount of Rs.3,40,000/-, as compensation to the complainant, in default of which she shall undergo simple imprisonment of one year. **Accordingly, the present appeal is disposed off.**

Copy of present judgment be sent to Ld. Trial Court for information and compliance along with trial court record.

Typed directly upon dictation on court computer and announced in Open Court, On 4th June, 2026

DEEPTI DEVESH

Digitally signed by DEEPTI DEVESH
Date: 2026.06.04 16:52:40 +0530

(Deepti Devesh)
ASJ/Spl.FTC/PHC/04.06.2026