The Court of District & Sessions Judge, Chittorgarh (Rajasthan)

Presiding Officer: Man Singh Chundawat (RJS- DJ Cadre)

Cr. Appeal No: 184/2024 (CIS No. 185/2024)

Kalu Ram Meena S/o Sh. Ganpat Lal Meena, by cast- Meena, aged-major, R/o- Railway Quarter, Pawtiya, Mukam Post- Kashmor, P.S. Chanderia, Tehsil & District- Chittorgarh, Rajasthan.

…………Appellant / accused

versus

Pankaj Soni S/o Sh. Lalit Soni, by caste- Soni, aged- 28 years, R/o- Juna Bazaar, Gulab Baag, Chhoti Sadri, presently residing at- Ghosunda, Tehsil & District- Chittorgarh, Rajasthan.

………Respondent / complainant

Present:

1. Sh. Sawan Shrimali, Advocate (for Appellant / accused)
2. Sh. Ramesh Sharma Advocate (for Respondent / complainant)

Dated: 22nd July, 2026

Order

1. Present order disposes of the criminal appeal which has been preferred by the accused/appellant against judgment dated 09/10/2024 passed by learned Special Magistrate (NI Act Cases), Chittorgarh, Rajasthan in Regular Criminal Case No. 1925/2019, titled as Pankaj Soni versus Kalu Ram Meena vide which appellant has been convicted for offence under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred as NI Act, 1881 in short) and has been sentenced with Simple Imprisonment of one year and exercising provisions of Section 357(3) of The Code of Criminal Procedure, 1973, it has also been directed that appellant / accused shall pay a sum of Rs. 3,90,000/- to complainant and it has also been ordered that accused shall undergo additional simple imprisonment of 3 months, where he fails to pay compensation awarded.
2. In nut shell, facts of the case are that respondent / complainant had filed a complaint before learned Trial Court claiming that appellant / accused

to satisfy his legal debt towards complainant, had issued Cheque No. 574824, dated 26/06/2019 of Punjab National Bank, Branch- Ghosunda, District- Chittorgarh, which was of Rs. 3,00,000/- and when said cheque was tendered for clearance with his bank, i.e. Punjab National Bank, Branch- Ghosunda, District- Chittorgarh, it was dishonored and revered with return memo dated 02/07/2019 with remark "Account Dormant" and thereafter since after having received legal notice dated 03/07/2019 on 29/07/2019, which was sent to accused on behalf of complainant, accused did not pay the amount concerned to complainant within 15 days of receipt of notice, appellant / accused had committed an offence under Section 138 of NI Act, 1881. In said complaint, learned Trial Court has convicted accused as already mentioned hereabove.

3. Learned counsel appearing for appellant / accused has advanced three folds arguments before this Court:

(a) that learned Trial Court failed to consider that it was never ever revealed by complainant in his complaint or in affidavit that on which date or at which place said sum of Rs. 3,00,000/- was given by him to accused and it was an admitted fact that there was no document to establish lending of said amount by complainant to accused and complainant miserably failed to establish his capacity to lend a sum of Rs. 3,00,000/- to accused and thus it was ample clear that complainant had miserably failed to discharge her burden; and thus, there was no occasion to convict accused.

(b) That learned Trial Court committed gross error in not considering that material available before learned Trial Court made it ample clear that in fact respondent / complainant in collusion with his maternal grandfather Shyam Lal, had misused the cheque and learned Trial Court failed to consider that respondent / complainant claims that cheque concerned was handed over to him by appellant / accused in First week of 2018 and if so, there was no reason of issuance of Cheque No. 574824 to complainant, where cheque no. 574823 was issued in the month of March, 2018, regarding bouncing of which complainant has been filed by Shyam Lal.

(c) Learned counsel for appellant / accused submits that learned Trial Court committed grave error of Law and Fact in not considering that presumption introduced by the virtue of Section 139 of The NI Act is rebuttable and where facts available on record made it ample clear that appellant / accused had successfully rebutted said presumption, there was no occasion before learned Trial Court to convict accused and hence learned counsel prays that impugned judgment be quashed and set aside and appellant / accused be acquitted.

4. *Per contra,* learned counsel appearing for respondent / complainant submits that in present matter bare perusal of documents on record and on oath statement of respondent / complainant make it ample clear that issuance of cheque concerned by appellant for payment of legal debt towards respondent / complainant has very well been established and accused has miserably failed to establish any probable defense and bare perusal of statement of accused recorded under Section 313 of CrPC and his statement recorded as DW-1 carries material contradiction regarding defense raised and thus learned counsel prays that appeal preferred be dismissed and judgment passed by learned Trial Court be affirmed.
5. Heard and perused record.
6. In present matter, this Court deems it proper to deal with the defense raised by learned counsel for appellant claiming that in fact cheque concerned was never issued by accused / appellant to complainant and it has been claimed that said cheque was in fact said cheque was forcefully obtained by complainant.
7. In this regard, it is pertinent to be mentioned here that contradictory claims have been made by appellant / accused:

   (a) **Statement recorded under Section 313 of CrPC**: it has been claimed by appellant / accused that he had in fact not given the cheque to complainant; but he had given said cheque to maternal grandfather of complainant, i.e. Shyam Lal, from whom he had borrowed money (***first version***);
   though, thereafter under said statement itself, it has been claimed by accused that complainant Pankaj had broken into his house and had forcefully obtained said cheque and he had got lodged FIR in this regard as well. (***second version***)

   (b) **Statement recorded as Defence witness:** while been examined as DW-1, it has been claimed by accused that cheque concerned was got signed by force and said cheque was acquired by maternal grandfather of complainant, i.e. Shyam Lal and also claims that he had got lodged FIR against them only, and also claims that he does not even know complainant Pankaj. (***third version*);**

"मेरे द्वारा मूल प्रति से सत्यापित किया गया"

moreover, it is also an admitted fact that no FIR whatsoever has ever been tendered by appellant / complainant to support alleged defence of his and statement of appellant / accused on its own reveal frivolity of defence raised.

8. It is also required to be mentioned here that so far it is concerned with the argument advanced on behalf of appellant that since complainant while been cross-examined has claimed that transaction took place in he first week of 2018; and if so, cheque no. 574824, could not have been issued by appellant / accused prior of issuance of cheque no. 574823, which was allegedly issued by appellant / accused to Shyam Lal in month of March; it is pertinent to be mentioned here that in complaint and in affidavit in evidence it has been specifically mentioned that transaction concerned took place in **First week of August, 2018** and if we have a look into the cross-examination of complainant, it has been mentioned that "हमारे बीच लेनदेन प्रथम सप्ताह, वर्ष 2018 में हुआ था।", (which can visibly be a typing error, with lapse of typing of month); but there is nothing on record to establish the month of issuance of cheque no. 574823 and it is also not at all disputed that no such suggestion was ever advanced to the complainant by appellant / accused; moreover, it is not at all mandatory that a cheque can be issued in accordance of its serial number only and thus in humble opinion of this Court argument advanced does not hold water.

9. It is required to be mentioned here that, so far it is concerned with other part of arguments advanced before this Court as mentioned in para no. 3 of this judgment; it is never disputed that it was never been revealed by respondent / complainant in his complaint or in affidavit in support of complaint that on which date or place or at which time sum of Rs. 3,00,000/- was lent by him to appellant / accused; though as already mentioned hereabove, it was specifically mentioned in complaint and in affidavit as well that transaction took place in first week of August, 2018; and while been cross-examined it has also been revealed that transaction took place at shop of complainant. It is also not at all disputed that no separate agreement in regard to such lending of money or statement of income and expenditure which would establish that complainant was capable of lending a sum of Rs. 3,00,000/- to anybody has been tendered before learned Trial Court.

10. **BUT,** it is required to be mentioned here that it has been very specifically laid down by Hon'ble Apex Court in **Rajesh Jain versus Ajay Singh 2023 INSC 888** that:

"27. In **K. Bhaskaran v. Sankaran Vaidhyan Balan (1997) 7 SCC 510** this Court had summarised the constituent elements of the offence in fairly similar terms by holding:

"14. The offence Under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence:

(1) drawing of the cheque,

(2) presentation of the cheque to the bank,

(3) returning the cheque unpaid by the drawee bank,

(4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

(5) failure of the drawer to make payment within 15 days of the receipt of the notice."

28. The five (5) acts as set out in **K Bhaskaran's case** (supra) are, generally speaking, matters of record and would be available in the form of documentary evidence as early as, at the stage of filing the complaint and initiating prosecution. Apart from the above acts, it is also to be proved that cheque was issued in discharge of a debt or liability (Ingredient no. (ii) in **Gimpex's case**). The burden of proving this fact, like the other facts, would have ordinarily fallen upon the complainant. However, through the introduction of a presumptive device in Section 139 of the NI Act, the Parliament has sought to overcome the general norm as stated in Section 102 of the Evidence Act and has, thereby fixed the onus of proving the same on the accused. Section 139, in that sense, is an example of a reverse onus clause and requires the accused to prove the non-existence of the presumed fact, i.e., that cheque was not issued in discharge of a debt/liability."

It has been further held by Hon'ble Apex Court that:

"Section 139 NI Act-Effect of Presumption and Shifting of Onus of Proof:

34. The NI Act provides for two presumptions: **Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall**

be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that 'unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability'. It will be seen that the *'presumed fact'* directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138.

35. Section 139 of the NI Act, which takes the form of a *'shall presume'* clause is illustrative of a presumption of law. Because Section 139 requires that the Court *'shall presume'* the fact stated therein, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase *'unless the contrary is proved'*.

36. **The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances**. *Firstly*, **<u>when the drawer of the cheque admits issuance/execution of the cheque</u>** and *secondly*, **<u>in the event where the complainant proves that cheque was issued/executed in his favour by the drawer</u>**. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. **[Bharat Barrel Vs. Amin Chand] [(1999) 3 SCC 35]"**

11. It is ample clear that in present matter five (5) acts as set out in **K Bhaskaran's case (*supra*)**, i.e.

(1) drawing of the cheque,

(2) presentation of the cheque to the bank,

(3) returning the cheque unpaid by the drawee bank,

(4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

(5) failure of the drawer to make payment within 15 days of the receipt of the notice.

are very well established; and issuance of cheque concerned by appellant / accused in favour of respondent / complainant can in no manner be doubted in light of discussion made hereabove and thus reverse onus introduced by the virtue of Section 118 and 139 of The NI Act comes into play and thus and requires the accused to prove the non-existence of the presumed fact, i.e., that cheque was not issued in discharge of a debt/liability.

12. It is also required to be mentioned here that though appellant / accused has tried to challenge financial capacity of respondent / complainant; **BUT,** it is ample clear that in present matter, it is not at all disputed that accused had received Legal Notice sent on behalf of respondent / complainant (**as clearly admitted by him while been cross-examined as DW-1**) and it is also an admitted fact that appellant / accused has never ever replied said notice challenging financial capacity of respondent / complainant and thus in light of verdict of Hon'ble Apex Court in **Tedhi Singh versus Narayan Das Mahant (Criminal Appeal No. 362/2022; Judgment dated 07/03/2022)** it cannot be presumed that defence has successfully established if respondent / complainant was having no financial capacity to lend a sum of Rs. 3,00,000/- to appellant / accused.

13. It is also required to be mentioned here that in **Ashok Singh versus State of Uttar Pradesh 2025 INSC** 427, it has been very clearly laid down by Hon'ble Apex Court that:

" The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan."

14. Thus, it is ample clear that in light of verdict of Hon'ble Apex Court in **Tedhi Singh** and **Ashok Singh's cases (*supra*),** in present matter, it cannot be held if appellant / accused is entitled to claim any benefit for the reason that respondent / complainant has not established his financial capacity of being capable to advance him a loan of Rs. 3,00,000/-.

15. It is also required to be mentioned here that so far it has been argued that non-existence of any separate documentary proof to establish the fact if respondent / complainant ever lent a sum of Rs. 3,00,000/- to appellant / accused, is also not at all worthy to be accepted, since there is

no legal requirement of existence of any other document to support the fact that cheque was issued by appellant / accused for payment of a legal debt.

16. It is also required to be mentioned here that nothing is there on record, which would in any manner reveal, if any sort of complaint was ever lodged by appellant / accused regarding misuse of concerned cheque by respondent / complainant.

17. In view of the aforesaid discussions, this court finds no merit in the appeal. Hence, no ground to interfere with the impugned judgment of the Learned Trial Court is made out, so far it is concerned with conviction of appellant / accused for commission of an offence under Section 138 of The NI Act, 1881.

18. However, on the point of sentence, this court is of the opinion that the imposition of sentence of simple imprisonment for one year alongwith direction of deposition of a sum of Rs. 3,90,000/- as compensation to respondent / complainant in accordance to Section 357(3) of CrPC, 1973, and awarding additional simple imprisonment of three months, in failure of non-payment of compensation awarded; too does not seem to be too harsh or inappropriate in any manner and this Court does not find any sort of justification to interfere in impugned judgment dated 09/10/2024 in this regard as well and hence impugned judgment dated 09/10/2024 passed by learned Special Magistrate (NI Act Cases), Chittorgarh, Rajasthan in Regular Criminal Case No. 1925/2019, titled as Pankaj Soni versus Kalu Ram Meena is hereby confirmed and present appeal being devoid of merits stands dismissed.

19. Record of Trial Court be sent back immediately alongwith a copy of this order.

20. File be consigned to record room.

Man Singh Chundawat
District & Sessions Judge
Chittorgarh (Rajasthan)

21. Order pronounced in open Court, today on 22nd July, 2026

Man Singh Chundawat
District & Sessions Judge
Chittorgarh (Rajasthan)

PRAHLAD RAI SOMANI
Digitally signed by PRAHLAD RAI SOMANI
Date: 2026.07.22 17:38:05 +0000

''मेरे द्वारा मूल प्रति से सत्यापित किया गया''