In the Court of Sh. Manu Singla, PCS, Judicial Magistrate, 1st Class, Sangrur. (UID No.PB0600)

Complaint Filing No.571 of 18.02.2021
CNR No.PBSG03-000572-2021
NACT-132-2021
Date of Decision:18.09.2024

Sunil Kumar son of Sat Pal, Resident of H. No.105, Ward No.1/B, Madhopuri Mohalla, Dhuri, Tehsil Dhuri, District Sangrur.

……..Complainant

Versus

Manveer Kaur wife of Gagandeep Singh, Resident of village Jahangir, Tehsil Dhuri, District Sangrur.

…......Accused

Complaint Under Section 138 of Negotiable Instrument Act 1881 amended up to date.

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Present :- Complainant with counsel Sh. Gagandeep Singh, Advocate.
Accused on bail with counsel Sh. Amrik Singh Dullat, Advocate.

JUDGMENT:-

1. The complainant has filed the present complaint under section 138 of Negotiable Instrument Act, 1881 against the above-named accused.

2. The brief facts of the complaint are that accused had good relations with the complainant and on 04.08.2020 accused approached the complainant to borrow a sum of Rs. 1,50,000/- and complainant agreed and advanced the the amount of Rs. 1,50,000/- @ 1.5% interest per month to the accused in the presence of marginal witnesses and in this

regard accused also executed a pronote and receipt in favour of the complainant on the same day. It is further averred that accused in order to discharge her lawful liability, issued a cheque bearing No.206770 dated 24.12.2020 for sum of Rs. 1,60,500/- out of her account No.100105922167 of Indusind Bank Ltd. Branch Kakkarwal, Tehsil Dhuri, District Sangrur. The complainant presented the above said cheque with his bank but the same was dishonoured vide memo dated 01.01.2021 with remarks "Funds Insufficient". Thereafter, complainant through his counsel issued a legal notice dated 05.01.2021 vide postal receipt dated 05.01.2021 to the accused calling upon her to make the payment of the above said cheque but accused has failed to make the payment of the above said cheque and thus the accused is liable to be prosecuted and punished under Section 138 of Negotiable Instrument Act. Hence, in the present complaint it is prayed that the accused is liable to be prosecuted and punished as per law.

3. Subsequently, on the basis of preliminary evidence adduced by the complainant, accused was ordered to be summoned to face trial under sections 138 of the Negotiable Instrument Act, vide order dated 18.02.2021.

4. Upon the issuance of notice accused appeared in the court and she was released on bail. On finding a prima facie case, notice for commission of offence under section 138 of Negotiable Instrument Act was served upon the accused to which she pleaded not guilty and claimed trial.

5. In order to prove his claim, complainant himself stepped into witness box as CW-1 and submitted his duly sworn affidavit Ex.CW-1/A in which he reiterated the facts

mentioned in the complaint and proved documents i.e. pronote and receipt dated 04.08.2020 as Ex. C1 and Ex. C2, original cheque Ex.C3, original memo Ex.C4, legal notice as Ex. C5, postal receipt as Ex.C6 and tracking record as Ex. C7.

Thereafter, learned counsel for the complainant tendered into evidence certified copy of complaint of Manvir Kaur as Ex. C8 and online copy of another complaint of Manvir Kaur as Mark A and closed the evidence on behalf of the complainant.

6. On closure of evidence of the complainant, statement of accused, under Section 313 Cr.P.C. was recorded wherein all the incriminating evidence appearing against the accused was put to her to which she termed the allegations and witnesses of the complainant to be false and pleaded her innocence and submitted that she had not borrowed any amount from Sunil Kumar and Manjeet Kaur wife of Manpreet Singh, Resident of village Jahangir had borrowed Rs. 10,000/- from Sunil Kumar and after some time Manjeet Kaur returned the whole money. She further stated that Manjeet Kaur is her best friend and in this regard, she has given the security cheque to Sunil Kumar and Sunil Kumar misused her cheques.

In defence evidence, accused tendered into evidence certified copy of complaint bearing Nact-279/2021 as Ex. DX, certified copies of orders dated 30.07.2021, 07.10.2021, 20.11.2021, 09.12.2021 as Ex. DY and copy of application dated 09.04.2022 as Ex. DZ and documents as Mark D1 to Mark D10.

Thereafter, accused closed her evidence vide her separate statement.

7. On sifting of evidence on record and appreciation of arguments, the following facts have gone either unchallenged or are admitted. So the chaff is separated from grain as under :-

1. Accused maintained his account with Indusind Bank.
2. Cheque leaf Ex.C3 dated 24.12.2020 belongs to bank account of the accused.
3. That on presentation, it was dishonoured on 01.01.2021 by accused's banker for "Funds Insufficient" vide memo Ex.C4.
4. That legal notice dated 05.01.2021 Ex. C5 was served upon accused through Postal receipt Ex.C-6 dated 05.01.2021.
5. Despite issuance of notice, accused did not make payment.
6. That present complaint is filed on 18.02.2021.

8. **Points of determination:-**

(i) Whether the complaint has been made out against the accused under Section 138 of N.I. Act?

(ii) Whether the accused has rebutted the legal presumption that cheque was issued for discharge of a valid liability?

Points of determination No.1:-

9. The first point for determination is that whether the ingredients under Section 138 of Negotiable Instruments Act are attracted in this case. For this purpose it would be pertinent to enumerate the ingredients to attract the provision under section 138 of the Act, which are as follows: -

- Presentation of Cheque within the period of its validity,

I. Dishonour of the Cheque,

II. Payee or holder in due course to send a demand notice to the drawer within 30 days from the dishonour of the cheque demanding the amount of the cheque which is dishonoured.

III. Drawer of the cheque fails to make the payment to the payee or holder in due course within 15 days of receipt of said demand notice.

The complainant proved on the record the fact that he has presented the cheque in question bearing No.206770 dated 24.12.2020 for sum of Rs. 1,60,500/- to the banker of the complainant on 01.01.2021 i.e. within the period of validity as per RBI Guidelines. The legal notice dated 05.01.2021 was sent to the accused through AD on 05.01.2021 i.e. within the period of 30 days from the receipt of information about dishonour of the cheque. When accused failed to make the payment within the period of 15 days from the date of receipt of legal notice, then this complaint filed by the complainant within the period of limitation.

10. From the sequences of events as mentioned above, this court is satisfied ingredients under Section 138 of N.I. Act are made out in the present complaint as present complaint has been filed within the period of limitation after complying the stipulated provision of Section 138 of N.I. Act. Therefore, point no.1 is decided in favour of complainant and against the accused.

11. Another point for determination before this Court is that whether the cheque in question was issued by the accused in favour of complainant for discharge of any legally

enforceable debt or liability. In order to prove this fact complainant himself stepped into the witness box and stated on oath that accused had borrowed an amount of Rs. 1,50,000/- from him and in order to discharge her legal liability, accused issued a cheque bearing No.206770 dated 24.12.2020 for sum of Rs. 1,60,500/-, which returned back dishonoured on the presentation with remarks “Funds Insufficient”. On the other hand, the accused came forward with the plea that she had not borrowed any amount from Sunil Kumar and Manjeet Kaur wife of Manpreet Singh, Resident of village Jahangir has borrowed Rs. 10,000/- from Sunil Kumar and after some time Manjeet Kaur returned the whole money. She further stated that Manjeet Kaur is her best friend and in this regard, she has given the security cheque to Sunil Kumar and Sunil Kumar misused her cheques.

12. Now it is pertinent to mention here that there are three ingredients for proving the evidence u/s 138 of Negotiable Instrument Act, 1881 which are as follows:-

- That there is a legally enforceable debt;
- That the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and
- That the cheque so issued had been returned due to insufficiency of funds.

13. Before proceeding further, the statutory presumption is to be dealt with. It is observed that as per the Negotiable Instruments Act two presumptions with regard to negotiable instruments; one containing in Section 118 of the Act and other in Section 139 thereof. Section 118 (a) reads as under: -

> **"118. Presumption as to negotiable instruments. Until the contrary is proved, the following**
>
> **presumptions shall be made (a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;"**

Section 139 of the Act reads 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."**

As per section 139 of Negotiable Instrument Act there is a presumption that unless contrary is proved holder of a cheque received the same for discharge in whole or in part of any debt or liability. Section 118 of the said Act stipulates certain statutory presumptions with regard to a negotiable instrument. Clause-A attached to section 118 provides that until the contrary is proved it shall be presumed that every negotiable instrument was made or drawn for consideration and that every such instrument, when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration. Such statutory presumptions are rebuttable in nature. The legal landscape qua existence of legally enforceable debt and liability and the burden to establish the same, is fairly settled in umpteen number of cases by Hon'ble Apex Court. In **K.Bhaskaran Vs. Sankaran Vaidhyan Balan and another 1999 (3) Civil Court Cases 385 SC and Goaplast Pvt. Ltd. Vs. Shri Chico Ursula D'Souza and Anr. 2003 (3) R.C.R. (Criminal) 131 (SC)** Hon'ble Apex Court has observed that section 139 enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden is on the accused to rebut the aforesaid presumption. Now it is to be seen that whether such presumption has been rebutted by the accused or not. Accused need not lead separate defence evidence and can rebut the above discussed statutory presumption from the evidence of complainant.

14. In *Kumar Exports Vs. Sharma Carpets*, (2009) 2 SCC 513, the Hon'ble Supreme Court, held as under:

"The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the Court need not insist in every case that the accused should disprove the nonexistence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the Court may either believe that the consideration and debt did not exist or their nonexistence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist.

Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act."

15. In *M. S. Narayana Menon Vs. State of Kerala*, (2006) 6 SCC 39, the Apex Court dealing with the statutory presumption under Sections 118(a) and 139 of the N. I. Act inter alia held as under:

"29. In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words "proved" and "disproved" have been defined in Section 3 of the Evidence Act (the interpretation clause)......

30. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(a) of the Act, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon. xxxxxx

32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies. xxxxxx xxxxx Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'."

16. The gist of two above mentioned precedents is that the accused is in trial under Section 138 NI Act is left with two alternatives for his defence. He can either show that consideration and debt did not exist for which direct evidence could be adduced which is seldom available or he can show by relying upon circumstantial evidence that under the particular circumstances of the case the nonexistence of consideration and debt is so probable that prudent man ought to suppose that no consideration and debt existed. The standard of proof to rebut the statutory presumption is not to prove it beyond the reasonable doubt as required in a criminal complaint. The onus to that effect on the accused is not onerous and what is required is a probable defence which could primarily find its foundation in preponderance of probabilities. In order to raise a probable defence, the accused can also rely on the evidence adduced by the complainant. However, a bare denial of the statutory presumption by the accused will not suffice.

17. After applying proposition of law as noted above, to fact of the present

case, it is clear that signatures on the cheque being not disputed, a presumption shall be raised under Section 139 of Negotiable Instruments Act, that cheque was issued in discharge of debt or liability. Now, it is to be seen in the present case that whether the accused has been able to raise any probable defence so as to rebut the presumption under Section 139 of Negotiable Instruments Act.

18. The offence of Section 138 of the N.I. Act being premised on the theory of reverse onus of proof, the next point of determination is whether the accused has been able to discharge the onus of proof placed upon him. The journey of trial qua a complaint under Section 138 NI Act, commences after a determination is made that presumption as per section 139 read with section 118(a) of N.I. Act can be raised against the accused and when such presumption is duly raised, it is the accused who is required to prove that the cheque in question was not given for any consideration or for discharge of any legally enforceable debt. In this regard, reliance can be placed upon judgment of Hon'ble Supreme Court of India in case of Hiten P. Dalal Vs. Bratindranath Banerjee (2001) 6 SCC.

"…….. because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, …, 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. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused".

19. In the backdrop of legal proposition as enunciated above, it is to be examined by this court that as to whether the accused on the scale of preponderance of probabilities has been able to rebut the presumption which has been raised against him and in favour of the complainant, or has been able to demolish the case of complainant to such an extent so as to shift the onus placed upon accused again on the complainant. The principal defence of the accused is that she had not borrowed any amount from Sunil Kumar and Manjeet Kaur wife of Manpreet Singh, Resident of village Jahangir had borrowed Rs. 10,000/- from Sunil Kumar and after some time Manjeet Kaur returned the whole money. She further stated that Manjeet Kaur is her best friend and in this regard, she has given the security cheque to Sunil Kumar and Sunil Kumar misused her cheques. Per-contra, complainant has submitted that accused had borrowed as amount of Rs. 1,50,000/- @ 1.5% interest per month from him and in order to discharge her legal liability, accused issued the cheque in question which was got dishonoured upon its presentation. Now, main leg of the argument of defence is that friend of accused namely Manjeet Kaur took a loan of Rs. 10,000/- from the complainant and in that eventuality being friend of Manjeet Kaur accused issued the cheque in question as guarantor in favour of the complainant, however, complainant even after receiving the loan amount did not return back her cheque to her and he filed the present complaint after misusing the cheque in question against her. Meaning thereby, accused herself has admitted the factum of issuance of cheque in question in favour of the complainant. Further, accused has failed to examine Manjeet Kaur during her defence evidence. The

burden of proof of proving the fact that she had not borrowed any amount from the complainant lies upon the accused, however, she, to utter dismay of this court, has miserably failed to put forth her defence by way of cogent and convincing evidence in this regard. Learned counsel for the accused has argued that accused had given the cheque in question as guarantor for loan being advanced by the complainant in favour of Manjeet Kaur. Even if the plea of the accused be taken as gospel truth then also issuance of the cheque by the accused in favour of the complainant has itself been admitted by the accused. This court does not find any force in the above contention of learned counsel for the accused. The language employed under Section 138 of NI Act, clearly depicts the intent of the lagislature to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability, there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act. Bare perusal of the Section 138 of the NI Act, clearly shows that section commence with the word, 'where any cheque' the user of the word 'any' is of extreme significance here which shows that for whatever reason if a cheque is drawn on an account maintained by the drawer on its bank, in favour of any person for the discharge of any debt or other liablity, the ingredients of Section 138 of the Act, gets attracted in a case cheque is returned dishonoured for the reasons 'funds insufficent' and cheque amount is not paid within the statutory period depite service of notice. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well.

In ICDS Ltd. Vs. Beena Shabeer and Another, (2002) 6 SCC 426, Hon'ble Supreme Court of India considered a question pertaining to maintainability of complaint under Section 138 NI Act vis-a-vis a guarantor. Hon'ble Supreme Court of India held, as under:

"The language, however, has been rather specific as regards the intent of the legislature. The commencement of the section stands with the words "Where any cheque". The abovenoted three words are of extreme significance, in particular, by reason of the user of the word "any"- the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason if may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment."

It is crystal clear from the aforesaid discussion that cheque could be issued for the discharge of debt or other liability by the drawer or of any other person including liability of guarantar. Section 128 of the Indian Contrct Act, provides that liability of the guarantor is co-extensive with that of principal debtor unless it is provided in the contract, hence as per Indian Contract Act, lender can enforce his right either against the principal borrower or the guarantor of principal borrower. On the co-joint reading of Section 138 of NI Act and Section 128 of Indian Contract Act, it is now crystal clear that liability of guarantor of loan fall within the provisions of Section 138 of NI Act. Further, this court is of the view that Presumption under Section 139 of NI Act, is raised in favour of the complainant as accused admitted her signature on the cheque in question, burden of proof was upon the accused to raise a probable defence and such burden is only to the extent of preponderance of probabilities but mere bare denial with not discharge even this burden. The onus on the acused to prove that the signatures on the cheque was not her signature. Further, accused has miserably failed to give any plausible explanation as to why she did not initiate any legal proceedings qua return of the cheque in question. The defence of the accused is only by means of mere/bare denial and does inspire confidence of the court and bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted upon the complainant. Accused failed to produce on record complaint, if any moved before the police authorities as well as before the bank authorities in order to prevent alleged misuse of the cheque. The onus to rebut the presumption was upon the accused and she was well within her rights to summon any relevant defence witness to prove the fact that the cheque in question has been misused by the complainant. However, she failed to do so and thereby she failed to raise probable defence in her favour. In this time line, till date of trial proceedings accused did not chose to take up any legal recourse projecting her grievances that the cheque in question has been misused by the complainant. This silence is speaking volumes against the claims of accused ,therefore, this effort shall be rated only as self-serving to defend her case. Further, she never disputed the factum of receiving demand notice neither during cross-examination of the complainant nor during her recording of his statement under Section 313 Cr. PC. The theory of blank cheque being misused has been suggested, only to be denied by the complainant. No action has been taken by way of registering a police complaint in order to prosecute the alleged illegal conduct of her blank cheque having been misused by the complainant. Further, the accused has neither even placed on record any complaint/application in order to establish the request, if any, was ever made by her to the complainant for returning the said cheque. Accused during her evidence as well as during cross-examination of the complainant has nowhere denied the fact that the cheque in question does not pertains to her account, which is being maintained by her with IndusInd Bank. In case **Kishan Rao Vs. Shankargouda 2018(8) SCC 165** of Hon'ble Supreme Court of India held that accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose.'

Furthermore, the evidential burden of proof is upon the accused and unless and until that burden is not discharged by accused, complainant has no obligation to prove the existence of legally enforceable debt as a independent fact. It is settled law that the effect of the presumption, in the sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the complainant towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further. Meaning thereby, presumption, literally means "taking as true without examination or proof". In **Kumar Exports Vs. Sharma Exports** (supra), Hon'ble Supreme Court of India, referred to presumption as "devices by use of which courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence. Therefore, in view of aforementioned discussion, the contention of accused that complainant has not been able to prove his case is not tenable.

20. Moreover, the version of accused regarding misuse of her cheque by complainant does not seem to be probable as if it is presumed to be true, then she should have taken some legal action against complainant. But the accused has not done so till date. Neither copy of any FIR/DDR lodged by her against the complainant has been placed on record nor the copy of any criminal complaint filed against the complainant in any Court of law till the initiation of trial proceedings. Even a better option available with the accused was that she could have intimated his bank to not to make payment as her cheque has been misused by complainant. But as per cheque return memo Ex.C4 the cheque in question has been dishonoured on the ground of "Funds Insufficient". Therefore, in these circumstances, the version of accused regarding misuse of his cheque is not worth believing.

21. It is pertinent to mention here that signatures on the cheque are not disputed as accused has herself was silent qua her signature in the statement under Section 313 Cr.PC. Moreover, accused has admitted the factum of the execution of cheque in question as well as her signatures on it. The accused has not shown any cogent and convincing evidence to show that the cheque was not issued against any liability. Further, no FIR/DDR was lodged by the accused against the alleged misuse of the cheque in question till the initiation of trial proceedings. In view of the presumption of under Section 139 of N.I. Act, the burden heavily lies upon the accused. The accused has been unable to rebut the presumption which exists in favour of the complainant. In a prosecution under section 138 of the Negotiable Instruments Act the complainant is not obliged to establish the liability as in a suit claiming recovery of money. That is why the presumption under section 139 has been incorporated. Otherwise, every criminal Court will have to first do the work of a Civil Court to identify the liability and the quantum. Admission of signature in a document goes a long way in the proof of the document. Once the document is proved the innocuous incongruities in details will not persuade a Court to reject the complainant's version nor shall it persuade the Court to hold that the burden under section 139 has been discharged. The insignificant incongruities, innocent inadequacies and the inconsequential infirmities in the evidence tendered by the complainant cannot held the accused to claim any advantage. Therefore, story put forth by the accused is not plausible one, therefore, plea taken by learned counsel for the

accused that complainant has failed to prove on record the legal liability of accused which was alleged to have been due towards complainant, is to be rejected.

22. Now taking up the plea of accused regarding issuance of security cheques, firstly it is to be noted that issuance of a cheque as security by a person itself shows that at the time of issuance of said cheque, he was under debt or any other liability. Said liability is to be discharged by her in one way or the other and in case she fails to discharge the said liability, then the security cheque issued by her becomes enforceable and then the same would be treated to have been issued by her in discharge of her liability. Now let us see as to what is the law regarding the cheque issued as security:

In Sripati Singh Vs. The State of Jharkhand & Anr., Crl. Appeal Nos. 1269-1270 of 2021 decided on 28.10.2021, Hon'ble Supreme Court of India held as under:

"16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security, in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.”

The Hon'ble Kerala High Court in ***General Auto Sales Vs. Vijaylakhshmi 2005 Crl.Journal 1454*** has held that even if a blank cheque has been given towards liability or even as a security, when the liability is assessed and quantified and the cheque is filled up and presented to the bank, the person who had drawn the cheque cannot avoid criminal liability arising out of section 138 of the Negotiable Instruments Act. Further Hon'ble Delhi High Court in ***Four Seasons Energy Ventures Private Limited Vs. State of NCT of Delhi*** decided on July 03, 2012 had drawn distinction between a cheque issued as a security and a cheque issued towards discharge of a liability to pay. The Hon'ble Delhi High Court has held that the only difference between the two is that a cheque given as a security is not to be encashed *in presenti*. However, it becomes enforceable if an obligation in future is not enforced. The Hon'ble Supreme Court also in ***I.C.D.S. Ltd Vs. Beena Shabeer*** decided on August 12, 2002 had held that words 'Any cheque' and 'other liability' used in section 138 Negotiable Instruments Act are important. In this case Hon'ble Supreme Court had held that even when cheque is issued as a security a complaint under section 138 of the Negotiable Instruments Act was maintainable. **The Hon’ble Supreme Court of India in case titled as Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr. Criminal Appeal No. 1497 of 2022,** has categorically observed that a cheque issued as security pursuant to the financial transaction cannot be considered as a worthless piece of paper under every circumstance. Security in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment, if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. Therefore, in view of the peculiar facts and circumstances, the said contention of learned counsel for the accused is devoid of any merits.

23. Learned counsel for the accused raised another contention that complainant is doing business of money lending, whereas he is not in possession of money lending licence, therefore, loan advanced to accused cannot be termed as legally enforceable debt and hence the present complaint is not maintainable. The Hon'ble Karnatka High Court in case titled as **"V. Satyanarayana Vs. M/s Sandeep Enterprises, 2005(1) RCR (Criminal) 441"** in which it was observed that money lending must be carried on as profession and if the money lending was not with profit motive or not carrying it as a profession, he or

she does not become money lender as stray instances of money lending do not show, that a person is carrying a business of money lending as a profession or with profit motive. In view of the factual matrix of the instant case, this court is of the considered view that there is no evidence on record to show that complainant is in habit of money lending to public at large on interest. Even otherwise receiving interest on amounts so advanced on account of failure of a person to fulfil his promise to return the amount within a stipulated time does not make the complainant a professional money lender. Thus, in view of the law discussed above, the aforesaid contention of the accused cannot be accepted.

24. Further, Section 139 NI Act introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. As held by the Hon'ble Supreme Court of India in case titled as **Bir Singh vs. Mukesh Kumar, 2019(4) SCC 197** as under:

"The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumption are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact."

25. In a case under Section 138 N.I. Act, for successfully rebutting the presumption under Section 139 N.I. Act, it is incumbent on the part of accused, firstly, to raise a probable defence and then, to establish the same on record. No doubt, for establishing the same, accused need not to examine herself as a defence witness, and she may rely upon the materials brought on record by the complainant themselves. But before doing so, she must raise a probable defence. From the judgments as referred above, it is well settled that the accused has to prove by cogent evidence that there was no debt or liability. Mere denial or rebuttal by the accused is clearly not enough. The fact that the cheque might have been misused, does not absolve the drawer of the cheque of the penal consequences of Section 138 of NI, if the same is issued for discharge of a legal liability.

26. Further, complainant has proved on record the copy of legal notice Ex. C5, which was served upon accused prior to the filing of present complaint. At that time accused was having an opportunity to point out, by filing reply to said legal notice, that the cheque in question was not issued to complainant in discharge of any liability, but the accused, for the reasons best known to her kept silent, which certainly shows that the accused, after the filing of complaint, started alleging that the cheque in question was never issued to complainant in discharge of any liability and that she has been falsely implicated, only to escape his liability in the present complaint. A meaningful reading of the provisions of Negotiable Instruments Act including in particular, Section 20, 87 and 139, makes it ample clear that a person who signs a cheque and makes it over to the

payee remains liable unless he adduces convincing evidence to rebut the presumption that a cheque has been issued for payment of a debt or in discharge of a liability. In **Rangappa Vs. Mohan, 2010(3) RCR (Civil) 197**, it has been held that: "*once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant*". Thus, once the signatures on the cheque in question is not in dispute and the accused has also not been able to prove that there was no legally enforceable liability at the time of the issuance of the cheque in question, a presumption under Section 139 Negotiable Instruments Act, 1881, is to be raised to the effect that the cheque was issued in discharge of a legally enforceable liability. The said presumption is a rebuttable presumption, but the onus to rebut the same is always upon the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. But in the present case the accused has failed to adduce any convincing evidence to prove that the cheque was not issued in discharge of the debt in the form of loan taken by the accused from the complainant. Further, there is nothing in the cross-examination of the CW1 from which the accused could be said to have rebutted the said presumption. It is, therefore, evident that the defence of accused is neither consistent nor inspiring. The said cheque was returned unpaid with endorsement 'Funds Insufficient'. If the accused or Manjeet Kaur had returned the amount, there is no explanation as to why he had not issued instruction to his banker to stop payment of said cheque. There is no explanation as to why he had not sent any demand notice to the complainant to return the said cheque. Therefore, point no.II is decided in favour of the complainant and against the accused.

27. So, after hearing the rival contention of both the counsels for the parties, after going through the documents available on file and after appreciating the evidence led by the complainant, this court of the view that this Court is of the view that accused has committed an offence under Section 138 Negotiable Instruments Act.

28. Hence, after considering all these facts, this court come to the conclusion that the accused has issued the cheque Ex.C3 for discharge of his legal liability towards the complainant, which was dishonoured due to "Funds Insufficient". The accused remained fail to make the payment despite receiving notice Ex.C-5 has clearly committed an offence under section 138 of Negotiable Instrument Act. As such accused is hereby convicted for offence under section 138 of Negotiable Instrument Act. Let, she be heard on the quantum of sentence.

(Manu Singla),
Judicial Magistrate 1st Class,
Sangrur.

Pronounced in open Court.
Dt. 18.09.2024

Rajbir, Stenographer-II

RAJBIR
I attest to the accuracy and authencity of this document
Digitally signed by RAJBIR
Date: 2024.05.17 00:25:24 +0530

QUANTUM OF SENTENCE.

Present :- Complainant with counsel Sh. Gagandeep Singh, Advocate.
Convict with counsel Sh. A.S. Dullat, Adv.

I have heard the convict, the learned defence counsel and learned counsel for the complainant on the quantum of sentence. The convict has pleaded that this is her first offence. Accordingly, she has prayed for leniency. Further, learned counsel for the complainant suffered a statement that except this case accused is not convicted in any other criminal case as per his knowledge.

The Court is of the considered opinion that there is sufficient material to prove the liability of the convict, under the impugned cheque, moreover such kinds of economic offences have to be dealt with iron hands because these offences have the tendency to disturb the economic and social fabric of the nation. Therefore, it is not a fit case for granting the benefit of probation to the convict. The Hon'ble Supreme Court in ***Suganthi Suresh Kumar Vs. Jagdeeshan, 2002(1) RCR (Criminal) 502,*** has held that in cases u/s.138 Negotiable Instruments Act sentence should not be inadequate otherwise it will defeat the provisions of Section 138 Negotiable Instruments Act. The Hon'ble Supreme Court has also held in ***State of Punjab Vs. Prem Sagar and others, 2008(3) RCR(Criminal) 197*** that while awarding a sentence Court should take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality depending upon the facts and circumstances of each case. The object of law relating to Negotiable Instruments is to facilitate activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. Thus, if principle of deterrence is not adopted while imposing sentence it may affect carrying on of the commercial and mercantile activities in a smooth and healthy manner ultimately effecting the economy of the country. Hence, this court decline her plea for probation and sentence the convict as under:-

Hence, the convict is sentenced as under: -

Name of Convict	Offence	Sentence
Manveer Kaur	U/S 138 of Negotiable Instrument Act.	To undergo R.I. for two years.

The complainant is also awarded the cheque amount Rs. 1,60,500/- as compensation recoverable from the accused U/S 357 Cr.P.C. after the period of appeal or revision in accordance with law. The period of detention already undergone by the accused/convict during trial, if any, be set off as per provisions of section 428 Cr.P.C. File complete in all respect be consigned to record room.

(Manu Singla),
Judicial Magistrate 1st Class,
Sangrur.

Pronounced in open Court.
Dt. 18.09.2024

Rajbir, Stenographer-II

Present :- Complainant with counsel Sh. Gagandeep Singh, Advocate.
Accused on bail with counsel Sh. A.S. Dullat, Adv.

Today Sh. A.S. Dullat, Adv., filed power of attorney on behalf of the accused. No DW is present. Accused closed her defence evidence by way of her separate statement. Arguments have been heard. Vide my separate detailed Judgment of even date, the accused is convicted and sentenced. Copy of the Judgment be supplied to the convict immediately free of cost. Bail bonds/surety bonds stands discharged. File be consigned to the record room complete in all respects.

(Manu Singla),
Judicial Magistrate 1st Class,
Sangrur.

Pronounced in open Court.
Dt. 18.09.2024

Rajbir, Stenographer-II

Present :- Complainant with counsel Sh. Gagandeep Singh, Advocate.
Convict with counsel Sh. A.S. Dullat, Adv.

Convict moved the instant application for suspension of sentence and for bail on the averments that she intends to file appeal against the judgment of conviction and order of sentence. She requested that her sentence may kindly be suspended and she be released on bail.

The offence for which the convict is convicted is bailable one and she was on bail during trial. Since the convict intends to file appeal against the conviction order and there are no special reasons for refusing the bail of the convict, so keeping in view the facts and circumstances, the convict is ordered to be released on bail for one month i.e. till 17.10.2024, on her furnishing of bail bonds in the sum of Rs.25,000/- with one surety in the like amount in order to give him sufficient time to file appeal against the conviction order. The sentence of imprisonment of convict is deemed to be suspended under Section 389 (3) of Cr.P.C/430(3) of The Bharatiya Nagarik Suraksha till 17.10.2024. Surety Amritpal Kaur appeared and suffered a statement that she had given surety of accused Manveer Kur on 23.01.2023, but now accused Manveer Kaur has been convicted by the court vide judgment dated 18.09.2024, so she requested that her earlier surety bonds furnished by her may kindly be extended for the period of one month as bonds under Section 389 (3) of Cr.P.C/430(3) of The Bharatiya Nagarik Suraksha. Request heard and allowed and earlier bail bonds/surety bonds furnished by accused be extended for the period of one month. File be consigned to the record room after due compliance. However, accused/convict is also directed to appear before this court on 17.10.2024 to inform, whether she filed the appeal or not. Photocopy of present zimni order be put up on 17.10.2024 along-with photocopy of judgment. Ahlmad is directed to do the needful for strict compliance.

(Manu Singla),
Pronounced in open Court. Judicial Magistrate 1st Class,
Dt. 18.09.2024 Sangrur.

Rajbir, Stenographer-II