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

+ CRL.A. 899/2017

PRAMOD KUMAR GUPTA

.....Appellant

Through: Mr. Shivam Goel, Ms. Kamya S. Goel and Ms. Sanya Sharma, Advocates.

versus

TARA CHAND GUPTA

.....Respondent

Through: Mr. Pritish Sabharwal, Mr. Sanjeet Kumar and Mr. Shashank Dey, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **11.03.2025**

1. The present appeal is directed against judgement dated 30th August, 2016, passed by the Metropolitan Magistrate (NI Act) South-East District, Saket Courts Complex in CC No. 2012/2016, whereby the complaint filed by the Appellant under Section 138 of the Negotiable Instruments Act, 1881¹ has been dismissed, and the Respondent has been acquitted for the offence under Section 138 NI Act. Leave to appeal was granted by this Court by order dated 15th September, 2017, and the matter was renumbered as the present appeal.

Factual Background

2. Briefly stated, the facts of the case, as outlined in the appeal, are as

¹ "NI Act"



follows:

2.1 The Appellant extended a friendly loan of ₹21 lakh to the Respondent, a friend of the Appellant's son in March, 2007. To acknowledge this loan, the Respondent executed a receipt dated 25th March, 2007, undertaking to repay the amount within one year along with interest at 18% per annum.

2.2 To secure repayment, the Respondent issued three post-dated cheques dated 25th March, 2008, amounting to ₹15 lakh, ₹2 lakh, and ₹4 lakh. However, upon presentation for encashment, all three cheques were dishonoured due to "*Funds Insufficient*", as reflected in the return memo dated 14th June, 2008.

2.3 Upon being informed by the Appellant of the dishonour, the Respondent requested additional time to make payment, asking the Appellant to present the cheques for encashment in the first week of September, 2008. Acting on this assurance, the Appellant presented the cheques again on 9th September, 2008, but they were once again returned unpaid with the same remarks in the return memo dated 9th September, 2008.

2.4 Following this, the Appellant issued a legal notice on 29th September, 2008 under Section 138 of the NI Act. Despite service of this notice, the Respondent failed to make the payment. Instead, through a reply dated 11th October, 2008, the Respondent denied liability, alleging that he had lost a bag containing blank signed cheques at Central Market, Lajpat Nagar, and accused the Appellant of fraudulently misusing the cheques.

2.5 With no payment forthcoming, the Appellant initiated proceedings under Section 138 of the NI Act. Upon service of summons, the Respondent appeared and was served with notice under Section 251 of the Code of



Criminal Procedure, 1973². The Respondent pleaded not guilty and claimed trial.

2.6 In order to prove his case, the Appellant examined himself as CW-1, and proved the following documents:

- (a) Copy of Special Power Attorney as Ex.CW1/1;
- (b) Receipt of acknowledgement of the loan dated 25th March, 2007 as Ex.CW1/2;
- (c) Returning memo as Ex. CW1/2A to EX.CW1/2C;
- (d) Original cheques in question as Ex. CW1/3 to Ex. CW1/5a;
- (e) Copy of legal notice, receipts of registered envelopes, UPC, acknowledgement and returned registered envelopes with acknowledgements as Ex. CW1/6 to Ex. CW1/11a; and
- (f) Reply of legal notice dated 11th May, 2008 as Ex.CW1/12.

2.7 The Appellant also examined his son, Mr. Ashish Gupta, as CW-2 and Sh. B.P. Mishra as CW-3, who generally deposed and also proved exhibit CW1/2.

2.8 On conclusion of Prosecution evidence, the Respondent recorded his statement under Section 313 CrPC, contending that all the incriminating evidence produced by the Appellant was false. The Respondent denied the receipt of the loan of ₹21 lakh and stated that he had only borrowed an amount of ₹2 lakh from the Appellant and ₹50,000/- from the Appellant's son, both of which had been repaid. Regarding the dishonoured cheques, the Respondent asserted that they had been misplaced at his residence around 2007-08, and were misused by the Appellant.

2.9 The Respondent examined himself as DW-1 in support of his defence.

² "CrPC"



2.10 Upon conclusion of trial and after hearing arguments, the Trial Court, *vide* judgment dated 30th August, 2016, acquitted the Respondent, holding that the Appellant had failed to establish the case under Section 138 of the NI Act beyond reasonable doubt.

2.11 Aggrieved by this decision, the Appellant has approached this Court, seeking reversal of the aforementioned impugned judgment.

Appellant's Case

3. Counsel for the Appellant challenges the impugned judgment on the following grounds:

3.1 The impugned judgment acquitting the Respondent is based on conjecture and surmises failing to appreciate the evidence on record. Since the Respondent admitted his signatures on the cheques, the statutory presumptions under Sections 118 and 139 of the NI Act were automatically attracted in favour of the Appellant. The burden thus shifted to the Respondent to rebut the presumption by leading evidence to prove that the cheques were not issued in discharge of a legally enforceable debt. However, the Respondent failed to discharge this burden, a fundamental error overlooked by the Trial Court.

3.2 The Respondent's claim that the cheques were misplaced is an afterthought, concocted solely to evade repayment of his financial liability. Pertinently, the cheques were presented for encashment twice, first in June 2008 and again in September 2008. If the cheques had genuinely been misplaced, the Respondent ought to have taken immediate steps to issue a stop-payment request or lodge a police complaint. However, no such steps were taken, raising serious doubts about the veracity of his defence.

3.3 The Trial Court failed to appreciate the inconsistencies in the



statements of the Respondent. In his statement under Section 313 CrPC, he stated that the cheques, bearing his signatures, were lying blank at his residence and were misplaced between 2007 and 2008. However, during his examination-in-chief, he changed his version and claimed that he lost a bag containing the cheques at Central Market, Lajpat Nagar, on 18th January, 2008. These irreconcilable contradictions, coupled with the absence of any police complaint regarding the alleged theft, render his defence wholly unreliable.

3.4 The amounts written on the cheques exactly match the loan amount advanced by the Appellant. This cannot be a mere coincidence. Moreover, the Respondent admitted to having signed the cheques which makes it evident that the cheques were issued as security for repayment, rather than being fraudulently misused by the Appellant, as falsely claimed.

3.5 The Trial Court erred in placing undue reliance on the non-disclosure of the loan in the Appellant's income tax returns. The omission of the loan in tax filings does not negate the existence of a legally enforceable debt under Section 138 of the NI Act. Any violation of the provisions of the Income Tax Act would be a matter between the defaulter and the Revenue authorities and cannot be a defence in a cheque dishonour case.

3.6 While the standard for rebutting the statutory presumption under Section 139 of the NI Act is based on a preponderance of probabilities, the Respondent has failed to meet even this evidentiary threshold. His bald allegations that the Appellant stole or misused the cheques remain completely unsubstantiated, with no corroborative evidence to support his claims.

3.7 The Trial Court failed to appreciate the passage of time. The



witnesses were examined five years after the loan was advanced, and minor inconsistencies in their testimony regarding dates and events were inevitable. However, these minor lapses do not undermine the core un rebutted facts of the case, particularly when the documentary evidence remains unimpeached.

3.8 The Trial Court erred in questioning the authenticity of the acknowledgment receipt dated 25th March, 2007, solely on the basis that different inks were used. The receipt bore the Respondent's signature and a revenue stamp, and the mere presence of different inks does not invalidate a legally binding document. This hyper-technical approach adopted by the Trial Court has led to a grave miscarriage of justice.

Respondent's Case

4. On the other hand, Mr. Pritish Sabharwal, counsel for the Respondent, defends the impugned order arguing that the reasons provided in the impugned judgment are cogent, reasonable, and reflect a proper appreciation of the evidence adduced by both parties, and it does not warrant interference. His submissions are summarized as follows:

4.1 The handwriting discrepancies on the cheques cast serious doubt on their authenticity. The cheques, issued under the signatures of Tara Chand and Company (Proprietor), have been altered using different inks and handwriting, which is visible to the naked eye. The name of the payee, amount in words, and numerical figures were all inserted later in a handwriting that does not match the Respondent's, suggesting interpolation.

4.2 Material contradictions exist in the Appellant's version of events. While CW-1 (Appellant) and CW-2 (Appellant's son) testified that the loan was disbursed on 25th March, 2007, CW-3 (B.P. Mishra) contradicted them,



stating that the payment was made in September 2007. These inconsistencies undermine the credibility of the Appellant's case and support the Trial Court's conclusion that the transaction itself is doubtful.

4.3 The Appellant's failure to produce income tax returns disclosing the loan amount weakens his case. The Supreme Court in **Shri Dattatraya v. Sharanappa**³ and **Rajaram v. Maruthachalam**,⁴ has held that unaccounted financial transactions cannot be enforced under Section 138 NI Act when they violate tax laws. The absence of the loan amount in the Appellant's tax records raises doubts about the existence of a legally enforceable debt.

4.4 Conflicting statements regarding the mode of payment also weaken the credibility of the Appellant's case. While CW-1 (Appellant) stated that the loan was transferred *via* banking channels, his own son, CW-2, testified that the amount was handed over in cash. This glaring contradiction proves that the alleged loan transaction is concocted.

4.5 The principal document relied upon by the Appellant—Exhibit CW1/2 (acknowledgment receipt) is forged and fabricated. The Trial Court correctly disregarded the same noticing multiple alterations, inconsistencies, and additions. Moreover, the Respondent categorically denied signing the receipt, further raising suspicions about its authenticity.

4.6 The unreliability of Exhibit CW1/2 is further established by the testimony of Appellant's own son (CW-2), who admitted that the receipt was entirely in his handwriting. He conceded that certain portions ('c to c' and 'b to b') were written in different inks and by different pens, suggesting manipulation. In such circumstances, the Trial Court rightly held that such a

³ [2024] 8 S.C.R. 121 : 2024 INSC 586.

⁴ (2023) 16 SCC 125.



document cannot be relied upon to establish a legally enforceable debt.

4.7 The cheques in question, which were lost, have been misused by the Appellant. In this regard, the Respondent filed a complaint with the SHO on 18th January, 2008, specifically reporting the loss of a bag containing the cheques in Lajpat Nagar. This contemporaneous police complaint lends credence to the defence that the cheques were stolen, and subsequently misused, rather than being issued for repayment of a loan.

4.8 Lastly, the standard of proof required to rebut the statutory presumption under Section 139 NI Act is not proof beyond reasonable doubt, but only on a preponderance of probabilities. The Respondent has successfully discharged this burden by demonstrating multiple inconsistencies and raising substantial doubts about the Appellant's version of events. Given these circumstances, the Trial Court was justified in acquitting the Respondent, and its findings merit no interference.

Analysis

5. The Court has carefully considered the rival contentions and examined the record. This case arises under Section 138 of the NI Act, a provision that embodies the legislative intent of ensuring the credibility of financial transactions through cheques. The legal framework governing such cases is clear: once the execution of the cheque is admitted, the law raises a statutory presumption in favour of the holder. In particular, Sections 118(a) and 139 of the NI Act mandate that unless rebutted, every negotiable instrument is presumed to have been issued for consideration and in discharge of a legally enforceable debt or liability.

6. Under Section 118 of the Act, once the signature on the cheque is admitted, the presumption is that the cheque was drawn for consideration. In



tandem, Section 139 further fortifies this presumption, asserting that the holder of the cheque is deemed to have received it in partial or full discharge of a debt or liability. The principle was reaffirmed by the Supreme Court, in **Rangappa v. Sri Mohan**,⁵ wherein the Court clarified that once the execution of the cheque is admitted, the presumption under Section 139 automatically applies. This presumption is undoubtedly rebuttable, but the burden to displace it lies squarely on the accused. It is equally well settled that a vague denial of liability, a bald assertion of misuse, or mere inconsistencies in the complainant's case do not, in themselves, suffice to discharge this burden. The accused must establish a credible and plausible defence that would lead the Court to believe, on a preponderance of probabilities, that no legally enforceable debt existed. The standard for such a probable defence is that it need only be established on a preponderance of probabilities, and it is not incumbent upon the accused to conclusively prove the non-existence of the debt or liability.⁶

7. Before the Trial Court, the Complainant successfully established all the essential ingredients of the offence under Section 138 of the NI Act. The Respondent admitted his signatures on the cheques, the cheques were dishonoured upon presentation, a legal demand notice was duly served, and payment was not made within the statutory period. These undisputed facts triggered the statutory presumption under Sections 118(a) and 139 of the NI Act, which creates a legal fiction that the cheques were issued in discharge of a legally enforceable debt or liability. Once the presumption was triggered, the burden shifted to the Respondent to rebut it by raising a

⁵ (2010) 11 SCC 441

⁶ Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148.



defence based on the preponderance of probabilities.

8. We now proceed to examine the impugned judgment to assess whether the Respondent was successful in rebutting the presumption under Section 139 of the NI Act based on the preponderance of probabilities. The Trial Court, in the impugned judgment, rendered the following findings:

13. *In the present case, the complainant has heavily relied on the receipt Ex.CW1/2 to prove the loan of Rs.21 lacs to the accused. In the receipt Ex. CW1/2, the words "**received futher a sum of Rs.6 lacs as loan. Total amount 21 lacs to be paid back with interest @ 18% p.a within one year. The details of PDCs as below**" had been written with different mean. The details of the cheques and signature of the witnesses are also written below the signature of accused. The complainant's witnesses failed to explain that why the receipt Ex.CW1/2 was written in two different inks. It seems that the abovementioned words had been written afterwards. Moreover, CW-1 and Cw-2 had stated that a loan was given on 25.03.2007. whereas CW-3 Sh.B.P Mishra who is also witness to the receipt Ex. CW-2 deposed that he did not remember the exact date of loan transaction but it was around September, 2007. Hence, there is a contradiction regarding the date of loan in the testimony of complainant's witnesses.*

14. *CW-1 in his statement recorded on 20.04.2018 stated that he has filed his ITR for each and every year including year ending on 31.03.2007 and transaction in question has been reflected in such statement. But, in his statement recorded on 30.04.2011, he deposed that he did not remember whether loan amount is reflecting in his ITR for the financial closing on 31.03.2007. Complainant did not produce his ITR of prove his financial capacity.*

15. *Complainant in his statement stated" **I do not know the exact source of money given to the accused. It might have been given through bank transaction**". Whereas CW-2 Sh. Ashish Gupta stated that the loan amount of Rs.21 lacs was paid to the accused in cash. There is contradiction regarding the mode of payment of loan amount of Rs.21 lacs. It is hard to believe that complainant did not remember the mode of payment of huge amount of Rs.21 lacs to the accused. These circumstances and contradiction in the testimonies of the complainant's witnesses cast a doubt upon the existence of any such loan of Rs.21 lacs.*

16. *Moreover, the said amount was unaccounted money and it was not a legally recoverable, debt. It was held in. case per tilted as **G. Pankajakshi Amma case** (supra) that if these are unaccounted transactions then they are illegal transactions. No court can come to the aid of the party in an illegal transaction. Hence, complainant has miserably failed to prove the fact that there is a legally recoverable.*



debt payable by the accused.

17. Accused examined himself as a witness and had also sent to reply to the legal demand notice. In his reply Ex. CW1/12, accused categorically denied the loan of Rs.21 lacs. In his statement as a witness on oath, he deposed that he borrowed Rs.2 lacs from the complainant and Rs.50,000/- from his son which was repaid by him as reflected in his passbook Ex.CW1/B. Accused has not been cross examined on this aspects of return of Rs.2.50 lacs though he was cross examined by the counsel for the complainant. Accused stood test of cross examination and re-affirmed his testimony in his cross examination. The complainant failed to explain on which account he and his son received Rs.2.50 lacs from the accused.

18. **Conclusion:**

In view of the aforesaid findings, the Court is of the considered opinion that accused is able to adduce a probable defence in his favour that the cheques in question were not issued to discharged the liability of the loan of Rs. 21 lacs because no such loan was taken by him and rebut the presumption u/s 139 of Negotiable Instruments successfully. The onus to prove the legal liability of the accused shifts back to the complainant, which the complainant has failed to discharge. Hence, accused Tara Chand Gupta is acquitted for the offence u/s 138 N.I. Act.”

9. The Trial Court concluded that the Respondent had rebutted the presumption under Section 139 of the NI Act by raising a probable defence. The impugned judgment hinges on three primary findings: (i) the alleged discrepancies in the receipt acknowledging the loan, (ii) the absence of the loan transaction in the Appellant’s income tax returns, rendering the amount as “unaccounted money” and not a legally returnable debt; and (iii) contradictions in the testimonies of the Appellant and his witnesses regarding the mode of payment. The Court shall now examine whether these factors were sufficient to rebut the presumption and shift the burden back to the Appellant.

Trial Court discrediting the Acknowledgement Receipt

10. The Trial Court rejected the evidentiary value of the acknowledgment receipt dated 25th March, 2007 (Exhibit CW1/2), which records the loan



transaction between the parties. The sole reason for disregarding the credibility of this document was the use of different inks. However, it is important to emphasize that this document bears the signatures of two witnesses, namely Ashish Gupta (CW-2) and B.P. Mishra (CW-3). Both of these witnesses unequivocally confirmed in their testimonies that the document was executed in their presence. Furthermore, they identified the signatures of the Respondent. The relevant portions of the testimonies of CW-2 and CW-3 are as follows:

“6. I say that a document/receipt was executed on 25.03.2007 in respect of the said friendly loan of Rs. 21 lacs by the accused person before me and I was one of the witness and signed the said 'document as witness. My signature is exhibited Exhibit CW-1/2 at point 'X'.

7. That I identify the signature of the accused person. The signatures are exhibited as Exhibit- CW-1/2 at point 'A, B, C'.

..XX..

..XX..

..XX..

6. I sat that a document/receipt was executed on 25.03.2007 in respect of the said friendly loan of Rs. 21 lacs by the accused person before me and I was one of the witness and signed the said document as witness. My signature is exhibited Exhibit CW-1/2 at point 'Y'.

7. That I identify the signature of the accused person. The signatures are exhibited as Exhibit- CW-1/2 at point 'A, B, C'.”

11. The Appellant successfully discharged the initial burden of proof once the execution of the receipt was attested by independent witnesses. The mere use of different inks is an insufficient ground to cast doubt on its validity, particularly in the absence of any contrary evidence. Despite categorical testimonies from CW-2 and CW-3, who confirmed their signatures and the execution of the document, the Respondent sought to dispute its authenticity by alleging forgery. However, such a bare assertion, without any corroborative evidence, does not constitute a valid rebuttal of the statutory



presumption under Section 139 of the NI Act. The Respondent was required to substantiate his claim by adducing positive evidence to disprove his own signatures, such as an expert opinion or forensic examination. No such steps were taken. In these circumstances, the Respondent failed to discharge his burden of proving that the document was fabricated. Consequently, his acknowledgment of the loan and the corresponding obligation to repay it remain unchallenged. Thus, the legally recoverable debt stood proved.

Trial Court's Misplaced Emphasis on Minor Discrepancies in Dates

12. The Trial Court placed undue emphasis on the discrepancies in the statements of the Prosecution witnesses regarding the date of the advancement of the loan by the Appellant. The Trial Court noted that while CW-1 and CW-2 stated that the loan was advanced to the Respondent in March 2007, CW-3, in his cross-examination, could not recall the specific date of the loan transaction, and vaguely stated that it was advanced around September 2007. The Trial Court erred in attaching significant weight to this inconsistency, as it was unreasonable to expect a witness to recall such specific details, especially given that the transaction occurred nearly five years earlier. Further, minor lapses in memory regarding the precise date of the transaction did not, by itself, contradict the loan transaction and its repayment, particularly when considered in conjunction with the other evidence adduced by the parties. All witnesses, including CW-3, duly confirmed that a loan was indeed advanced to the Respondent. The Trial Court's reliance on this inconsistency to discredit the entire claim is, therefore, misplaced and legally unsustainable.

Respondent's Defence: A Shifting and Contradictory Stand

13. The Respondent claimed that the cheques had been misplaced and



later misused by the Appellant, suggesting that the Appellant had stolen the cheques with the intention of fraudulently encashing them. However, the Respondent failed to provide any credible explanation as to how the Appellant came into possession of these cheques. Pertinently, in his reply dated 11th October, 2008, to the legal notice under Section 138 of the NI Act, the Respondent stated, *“he had lost his bag on 18.01.2008 in Central Market, Lajpat Nagar. New Delhi which contained money, documents, articles and some signed cheques, some of which were filled with amount in words and figures and some were blank.”* However, in his statement under Section 313 CrPC, the Respondent contradicted this account, asserting *“the cheques in question were lying blank with my signatures only at my house and from there same got misplaced around the year 2007-2008.”* Furthermore, during his examination-in-chief, the Respondent materially altered his stand and alleged, *“I had lost my bag containing the cheques in question along with other cheques of Punjab National Bank, ICICI Bank & Bank of India on 18/01/2008 In central market, Lajpat Nagar. I met with Ashish also when I was in the market. I went to post office after the market. My bag also contained electricity bills, telephone bills, CD of marriage & some stamp papers etc. Some of the cheques were filled up with amount and my signatures & some cheques were blank.”*

14. The Respondent’s defence is riddled with contradictions eroding its credibility. In his reply to the legal notice, he initially claimed that he lost his bag containing the cheques in Central Market, Lajpat Nagar. However, in his Section 313 CrPC statement, he entirely altered his stance, asserting instead that the cheques were misplaced at his home. Yet again, during his examination-in-chief, he reverted to his original claim that the bag was lost



in the market. This pattern of inconsistent statements raises serious doubts about the truthfulness of his defence.

15. The Court also finds merit in the Appellant's contention that if the cheques were indeed misplaced, the reasonable and immediate course of action for the Respondent would have been to notify his bankers without delay. The cheques in question were presented for encashment on two separate occasions – June 2008 and September 2008. However, despite the alleged misplacement of the cheques, the Respondent took no action to prevent their encashment, nor did he issue any "stop payment instructions" to the bank. Furthermore, the Respondent could not substantiate his claim that he had lodged a complaint regarding the alleged theft of his bag containing the cheques. Respondent's witness, Insp. Ramesh Kumar, SHO PS Lajpat Nagar (DW-2) could not confirm that any complaint regarding the theft or loss of the cheques was ever lodged with the police. The relevant excerpt of DW-2's testimony is as follows:

"Statement of Insp Ramesh Kumar, SHO PS Lajpat Nagar

On SA

I have brought the relevant record pertaining to the complaint of Tara Chand Gupta dated 18/01/2008. As per the record of daily diary register A & B dated 18/01/2008, there is no entry regarding the complaint of Tara Chand Gupta on this date. The complaint register of the relevant period has been destroyed vide order no. 3342-43/HAR/SED dated 20/03/2013.

XXXXXXX By counsel Sh Rajnish Tiwari for complainant

Nil. Opportunity given."

Unaccounted Transactions and Enforceability

16. The Trial Court also wrongly held that, because the Appellant had not



declared the loan in his income tax returns, the transaction was not legally enforceable. A private loan transaction does not become unenforceable merely because it is not reflected in the lender's income tax returns. The provisions of the Income Tax Act operate independently, and do not override the presumption of a legally enforceable debt under the NI Act. Even assuming there was a tax violation, it would be a matter for revenue authorities, and not a defence under Section 138 NI Act. On this aspect, the Trial Court's reliance on ***G. Pankajakshmi Amma and Ors. v. Mathai Mathew***⁷ is misplaced as the facts in the said case are materially different. In the said case, the complainant was a moneylender, who, by virtue of Section 9 of the Kerala Moneylenders Act, 1958, was statutorily obligated to maintain proper books of accounts. Furthermore, in that case, the parties had agreed that the transactions between them would be unaccounted transactions, through a chit-fund arrangement. The complainant's failure to maintain such books of accounts, coupled with the admittedly unaccounted transactions between the parties, led the Supreme Court to draw an adverse inference against the complainant in the peculiar facts of the said case, concluding that the unaccounted transactions were, in effect, illegal. As such, the Court held that no court could come to the aid of the parties in matters involving illegal transactions.

17. These findings of ***G. Pankajakshmi*** are wholly inapplicable to the facts of the present case. Here, the Appellant had extended a loan amounting to ₹21 lakh to the Respondent against three post-dated cheques issued by the Respondent, and this transaction was duly recorded in the acknowledgement receipt dated 25th March, 2007. Pertinently, neither were these transactions

⁷ (2004) 12 SCC 83.



unaccounted, nor was the Appellant a moneylender obligated to maintain books of accounts. Therefore, the Trial Court's reliance on **G. Pankajakshmi** to conclude that the loaned amount was not a legally recoverable debt is entirely misplaced and erroneous.

18. As regards the Respondent's argument concerning the Appellant's financial capacity, it is well-established that merely suggesting that the Appellant lacked the financial capacity to extend the alleged loan is insufficient. The High Court of Bombay in **Prakash Madhukarrao Desai v. Dattatraya Sheshrao Desai**,⁸ placing reliance on the judgement of the Supreme Court in **Rangappa**, held that a transaction not reflected in the books of accounts and/or Income Tax returns of the holder of the cheque in due course can be enforced by instituting proceedings under Section 138 of the NI Act in view of the presumption under Section 139 of the Act, and it is for the accused to rebut such presumption. Therefore, the burden was on the Respondent to substantiate this claim with cogent and convincing evidence. However, no cogent or reliable evidence was adduced to support this assertion. It is a settled legal principle that a bald denial or vague allegations, without substantive proof, cannot displace the statutory presumption.⁹ Since the Respondent failed to meet this burden, even on a balance of probabilities, the presumption in favour of the Appellant remained intact and un rebutted.

The Respondent 's failure to rebut the presumption

19. It is well-settled law that in proceedings under Section 138 of the NI Act, the accused has two possible avenues to rebut the presumption—either

⁸ (2023) 458 ITR 174.

⁹ **V. S Yadav v Reena**, 2010: DHC :683



to prove that no consideration or debt existed, or to demonstrate that, in the specific facts of the case, the non-existence of such liability is so probable that a prudent person would be compelled to conclude that no debt ever arose. The accused may discharge this burden either by leading direct evidence or by relying on the material already on record. However, in the present case, the Respondent failed to discharge this burden. He was unable to produce any evidence to substantiate his claim that the cheques were stolen and fraudulently encashed by the Appellant, nor could he disprove the same based on the evidence available. Mere allegations, of misplacing the bag containing cheques, lodging a police report, and raising doubts about the signatures on the acknowledgment receipt, are insufficient to rebut the statutory presumption under Section 139 of the NI Act.

20. As reiterated in ***Basalingappa v. Mudibasappa***,¹⁰ the burden of proof on the accused, though lighter than that on the prosecution in a criminal trial, still requires a plausible and probable defence backed by reliable evidence. In the present case, the Respondent failed to discharge even this minimal burden.

Conclusion

21. To conclude, the Respondent not only failed to furnish any cogent evidence to substantiate his defence, but also provided contradictory explanations at different stages of the proceedings. These inconsistencies, coupled with the absence of any credible evidence to rebut the statutory presumption under Section 139 of the NI Act, significantly undermine his claim that the cheques were misused. On the contrary, the evidence on record supports the Appellant's case that the cheques were issued in

¹⁰ (2019) 5 SCC 418



discharge of a legally enforceable debt.

22. In light of the foregoing discussion, this Court holds that the impugned judgment suffers from a misappreciation of evidence and an erroneous application of law.

23. Accordingly, the impugned judgment is set aside. As a necessary consequence, the Respondent is convicted for the offence under Section 138 of the NI Act.

24. List for arguments on the point of sentence on 26th March, 2025.

25. The Respondent shall appear in person along with his counsel on the next date of hearing.

SANJEEV NARULA, J

MARCH 11, 2025

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