Delhi High Court Pine Product Industries And Anr. vs R.P. Gupta And Sons And Anr. on 6 December, 2006 Equivalent citations: II (2007) BC 20 Author: B D Ahmed Bench: B D Ahmed JUDGMENT Badar Durrez Ahmed, J. 1. This revision petition is directed against the judgment dated 12.10.2006 delivered by the learned Additional Sessions Judge dismissing the petitioner's appeal under Section 374(3)(a) of the Code of Criminal Procedure, 1973 against the order of conviction dated 10.5.2006 and order on sentence dated 12.5.2006 passed by the learned Metropolitan Magistrate. The petitioner had been convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and had been sentenced to simple imprisonment for six months. Besides this, the petitioner was directed to pay compensation under Section 357 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) to the complainant to the tune of Rs 5 lacs and, in default, to undergo further simple imprisonment for three months. 2. The learned Additional Sessions Judge dismissed the appeal primarily on the ground that the petitioner had failed to raise any probable defense and failed to rebut the presumption that the cheque in question was issued in discharge of his liability. 3. The petitioner had allegedly issued a cheque dated 27.12.1999 for a sum of Rs 3,15,000/- in favor of the respondent No. 1 (R.P. Gupta and Sons). Apparently, the cheque was paid in discharge of a debt or liability. 4. The learned Counsel for the petitioner submitted that when the cheque had been returned by the bank on 22.1.2000 with the endorsement that the same had been dishonoured on account of insufficiency of funds, the complainant sent a notice dated 28.1.2000 (Exhibit PW1/4). The factum of receipt of the said notice was not denied by the petitioner and the petitioner sent a detailed reply dated 4.2.2000 (Exhibit PW1/D1) wherein detailed circumstances were indicated showing that the said cheque was misused by the complainant and no such amount was due from the petitioner. The case of the petitioner with regard to the said cheque was that the petitioner and the complainant had business dealings since 1995-96 whereby the petitioner was supplying the goods from time to time to the complainant on receipt of payments. It was further indicated in the reply that as the petitioner and the complainant developed good business relations an account was opened on the introduction of the complainant at the bank in Delhi and since the dealings required the petitioner to make repeated transactions, the cheque book and pass book of the said account were also maintained by the complainant. It was submitted that certain blank signed cheques were also handed over to the complainant and it is one of these cheques which was filled in by the complainant which formed the subject matter of the present case. 5. The learned Counsel for the petitioner submitted that no reply or response to this letter dated 4.2.2000 (Exhibit PW1/D1) was received by the petitioner. He submits that in the wake of this letter the complaint filed by the complainant ought to have spelt out the details of the liability, in purported discharge of which the cheque in question was issued. He referred to the complaint. The first paragraph of which reads as under: 1. That the accused to discharge liabilities of repayments of the amounts taken by him issued a cheque bearing No. 568558, dated 27.12.99 for Rs. 3,15,000/- drawn on Punjab National Bank, Khari Baoli, Delhi-6 as part payment. 6. The learned Counsel

for the petitioner submitted that the above paragraph is the only statement contained in the complaint with regard to the alleged liability of the petitioner. He submitted that no details whatsoever have been indicated as to what the liabilities were, what were the "amounts" for which the said cheque was issued for part payments, on which dates the amounts were taken by the petitioner. Nor were the exact "amounts" taken by the petitioner mentioned. In other words, the learned Counsel for the petitioner submitted, the complaint was completely vague and bereft of any details. 7. The learned Counsel for the petitioner further submitted that even the examination and cross examination of PW1 (Narender Kumar Gupta, who is the proprietor of R.P. Gupta and Sons) does not shed much light on the nature of the transactions. He submitted that initially in his examination in chief, PW1 has merely stated that the cheque (Exhibit PW1/1 dated 27.12.1999) for Rs. 3,15,000/- drawn on Punjab National Bank, Khari Baoli branch was issued by the petitioner in discharge of his liabilities towards the firm R.P. Gupta & Sons. No details, as to what the extent of the liability was, were mentioned. The learned Counsel for the petitioner further pointed out that in cross examination, PW1 has taken different stands. In the first instance, he stated that "A sum of Rs. 2,96,000/- (Rupees Two lakhs Ninety Six Thousand) was due to the complainant from the accused and the accused issued the cheque for Rs. 3,15,000/- (Rupees Three Lakhs fifteen thousand) after adding the interest amount". Subsequently, in the same cross examination, PW1 has clearly admitted that the interest element was not specified in the complaint nor was the principal amount of Rs. 2,96,000/- mentioned in the complaint. 8. In the said cross examination a further stand is taken by the complainant that certain goods were purchased from the petitioner vide invoice bearing No. 122 dated 16.12.1999 (Exhibit PW1/D2). It was further stated that the amount of the invoice had already been adjusted and, thereafter, the balance payment had been shown as Rs. 2,96,000/-. It is then stated by PW1 that : "The accused has taken a loan of Rs. 5 lakhs (five lakhs) and the goods purchased by us from the accused have been adjusted in the said loan account and when the cheque in question was issued there was balance of Rs. 2,96,000/- besides interest". The learned Counsel for the petitioner further pointed out that a third stand had been taken with regard to the payment of money in the same cross examination as indicated below: I had paid Rs. 5 lakhs as an advance for purchasing the goods from the accused. It is wrong to suggest that I am deposing falsely. I do not remember when I paid Rs. 20,000/- in cash on 15.1.2000 and Rs. 17,400/- on 17.1.2000 to the accused without seeking the record. I have complete record. 9. In view of the aforesaid circumstances, the learned Counsel for the petitioner submitted that the presumption that is drawn under Section 139 of the Negotiable Instruments Act, 1881 stood rebutted and it was necessary for the courts below to insist on requiring the complainant to prove that the cheque in question was issued in discharge, in whole or in part, of any debt or other liability. He submits that, unfortunately, the courts below held that the presumption raised by virtue of Section 139 of the Negotiable Instruments Act, 1881 did not stand rebutted and, therefore, the case was clearly made out against the petitioner and he was convicted and sentenced as mentioned above. 10. The learned

Counsel for the respondent No. 1 (the complainant) submitted that the courts below have correctly appreciated the position in law. He submitted that, even as per the statement of the petitioner recorded under Section 313 of the Code, it is clearly established that the cheque was issued by the petitioner; that it had been returned due to insufficiency of funds; that the notice was served on the petitioner; that he failed to pay the amount within the stipulated period of 15 days and that the complaint was filed in time. He submits that, on the face of these circumstances, the presumption under Section 139 was clearly raised and went un-rebutted and, therefore, the courts below relying upon this presumption have correctly convicted and sentenced the petitioner. 11. Considering the arguments advanced on behalf of the counsel for the parties, I find that there is no difficulty with the proposition that Section 139 of the Negotiable Instruments Act, 1881 raises a presumption that the holder of the cheque, received the cheque for the discharge, in whole or in part, of any debt or other liability. There is also no dispute that this presumption is a rebuttal presumption. The presumption has to be rebutted in the course of the trial and once rebutted the onus would shift on the complainant to establish and prove beyond reasonable doubt that the cheque was, in fact, issued for the discharge, in whole or in part, of any debt or other liability. Once this presumption is rebutted then the case has to be considered from the stand point of the explanation contained in Section 138 which says that for the purposes of that Section, "debt or other liability" means a legally enforceable debt of other liability. So, once the presumption is rebutted, the onus shifts on to the complainant to not only establish that the cheque was issued for the discharge of a debt of other liability but that such debt or liability was legally enforceable. 12. In the present case, I find that the petitioner despite opportunities granted to him, did not lead any defense evidence. An application under Section 311 of the Code had been moved before the trial court but the same had been rejected. So, we are left with only the evidence led by the complainant. If the petitioner is yet able to show from the evidence on record that the presumption is rebutted then the complainant must be able to establish from the evidence on record itself that a case under Section 138 is clearly made out. The petitioner has been able to show that a contemporaneous reply given by him on 04.02.2000 raised issues with regard to the manner and circumstance under which the complainant came in possession of the cheque in question. However, despite being aware of these issues, when the complaint was filed by the complainant, as rightly pointed out by the learned Counsel for the petitioner, the same was significantly vague and bereft of any details. The first paragraph of the complaint which has been extracted above clearly refers to "discharge liabilities of repayments of the amounts". The expression used in the complaint is that the cheque was given in discharge of liabilities of repayments of the "amounts". Meaning thereby that several amounts were paid by the complainant to the petitioner and it is in discharge of the liabilities of repayments, in part, of such amounts that the cheque was given. Unfortunately, the evidence on record and that too of PW1 himself is at variance with this statement. Despite the contradiction which has been pointed out and the shifting stands taken by the PW1 in his testimony, even if it is presumed that an "advance" of

Rs. 5 lakhs was paid by the complainant to the petitioner, the same has been indicated to have been paid in one go and therefore, the expression "amounts" appearing in the complaint would be at variance with the evidence led by PW1. Apart from this, there is no mention in the complaint as to when the "amounts" were or amount was paid. What was the rate of interest, what was the extent of the goods which were supplied and adjusted against the payment. Further more, in the testimony of PW1, it is not indicated as to when the said advance of Rs. 5 lakhs was made, on which date the goods were received, what was the rate of interest. From which date the interest was to be computed and how was the figure of Rs. 2.96 lakhs representing the principal amount computed. Nor is there any computation of the interest element of the difference between Rs. 3.15 lakhs and Rs. 2.96 lakhs indicated. All these details are conspicuously absent. The petitioner has been convicted and sentenced on the vague and bland allegation that cheque of Rs. 3,15,000/- had been issued by the petitioner in discharge of liabilities of repayments of amounts taken by him. This is the only statement contained in the complaint and no further details are forthcoming even in the evidence led by the complainant. 13. In these circumstances, I hold that the courts below have grossly erred in law in concluding that the petitioner was unable to rebut the presumption raised under Section 139. Since, the conviction and sentence have been raised merely on the petitioner's alleged inability to rebut the presumption and there is nothing available on record to establish the complainant's case, I am of the view that the petitioner is entitled to acquittal. The impugned order is set aside. The petitioner is acquitted. The petitioner is in custody. He is directed to be released forthwith.