

# In Re: Raj Kishore Uppal vs . Mukesh Taneja on 30 January, 2023

IN THE COURT OF MR. ROHIT KUMAR, MM (NI ACT),  
DIGITAL COURT-02, SOUTH, SAKET COURTS, DELHI

IN RE: Raj Kishore Uppal Vs. Mukesh Taneja  
CC No. 1192/2021  
CNR No. : DLST02-004186-2021

Raj Kishore Uppal  
S/o Sh. M P Uppal  
R/o 39/1324, DDA Flats,  
Madangir,  
New Delhi-110062  
M/ WP: 8459825425

..... Complainant

Versus

1. Mukesh Taneja  
Proprietor of M K Fashion  
Khasra No.131,  
Gali No.1, Harijan Basti,  
P O IGNOU, Neb Sarai,  
New Delhi-110068  
M/ WP:9718803678  
Also at:  
Patanjali Store,  
111/2, IGNOU Road,  
Freedom Fighter Colony,  
Saket, New Delhi-110017

2. M K Fashion  
Through its Proprietor- Mukesh Taneja,  
Khasra No.131,  
Gali No. 1, Harijan Basti  
P O IGNOU, Neb Sarai,  
New Delhi-110068  
M/ WP:9718803678

.....Accused

DATE OF INSTITUTION	: 24.02.2021
OFFENCE COMPLAINED OF	: U/s 138/141/142 NI Act
DATE OF JUDGMENT	: 30.01.2023
DECISION	: Acquitted

CC NI ACT 1192/2021  
Raj Kishore Uppal Vs. Mukesh Taneja

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JUDGMENT

1. The instant matter has originated out of a complaint under Section 138 read with Section 141/ 142 of Negotiable Instruments Act (hereinafter referred to as the 'NI Act'), filed by the complainant against the accused alleging that cheque dated 17.12.2020, amount of Rs.6,35,000/- bearing no.544095 drawn on Yes Bank, Saket New Delhi-110017, in favour of the complainant, in discharge of a legal debt or other liability, has been dishonoured and the accused has not paid the said amount even after receiving the prescribed legal demand notice. By virtue of this judgment, the present complaint is being disposed of.

Brief Facts of the case:

2. The case of the complainant, in nutshell, is that the complainant works as a real estate consulate since 2010. The the accused is engaged in the business of garments and had a garment shop by the name of M K Fashion in Madangir Market, New Delhi-110062. The accused was introduced by a friend of the complainant (Narayan Kumar) and is known to the complainant since the last 5 years. The complainant and the accused thus developed good business and professional relations.

3. That the accused approached the complainant in August 2019 and stated that he is in dire need of Rs 10 lacs to complete some orders of his buyers and he shall return as soon as he gets the payment. The complainant was initially reluctant but after Digitally signed by ROHIT ROHIT KUMAR CC NI ACT 1192/2021 Page No. 2 of 28 KUMAR Date:

2023.01.30 Raj Kishore Uppal Vs. Mukesh Taneja 16:47:14 +0530 much persuasion finally relented and gave Rs 5,00,000/- on 01.11.2019 as he had sold the top floor of H. No. 39/1324, DDA Flats, Madangir, New Delhi-110062 to Ms Nisha Chouhan for Rs 15 lacs. Rs 7.75 lacs was received by Cheque and the balance by cash. This loan was given for a period of 12 months @ 2% per month and was due on 01.11.2020.

4. That the accused handed over five blank cheques ( nos 544095, 544096, 544097, 544098 and 544099 drawn on Yes Bank, Saket, New Delhi) and signed a loan agreement and receipt on 08.11.2019 which was duly notarised on 12.11.2019 and witnessed by the common friend who introduced both the parties. (i.e. Narayan Kumar).

5. That the complainant approached the accused on 01.11.2020 for the return of his funds with interest. The accused told him to wait for one month more and gave a reason of the Covid Pandemic for the delay. The complainant again approached the accused on 01.12.2020 but the accused switch off his mobile phone and remained incommunicado.

6. That the complainant, fed up with the conduct of the accused banked the cheque

no. 544095 on 17.12.2020 after filling the amount of Rs 6,35,000/- which included the unpaid interest of Rs 1,35,000/- (Rs 10000/- per month for 13.5 months).

The return memo dated 18.12.2020 from the banker of the accused stated the reason for return as Present with Document". The complainant was perplexed and re-presented the cheque with all the documents on 31.12.2020 which was returned on Digitally signed by ROHIT CC NI ACT 1192/2021 Page No. 3 of 28 ROHIT KUMAR Raj Kishore Uppal Vs. Mukesh Taneja KUMAR Date:

2023.01.30 16:47:20 +0530 01.01.2021 with the reason "Funds Insufficient".

7. That the complainant after the receipt of this information tried to contact the accused but he started evading the calls and remain incommunicado.

8. That the complainant, after this misconduct of the accused instructed his counsel to issue a legal notice dated 13.01.2021 which was duly sent by Speed Post on 13.01.2021. The counsel also sent the legal notice on the whatsapp of the mobile number of the accused - 97188 03678 on 13.01.2021 at 2.56 pm which was duly received and read by the accused.

9. That the accused, Instead of paying the amount, sent the reply to the legal notice dated 13.01.2021 through his advocate, Sh Sunil Kumar on 27.01.2021.

10. That even after the lapse of the statutory period of 15 days, the accused has not paid the complainant and has thus committed the offences of criminal breach of trust and cheating u/s 406, 420 IPC and u/s 138 of the Negotiable Instruments Act, 1881.

#### PROCEEDINGS BEFORE COURT

11. Pursuant to presentation of the present complaint, summons were issued against the accused. Upon the appearance of the accused, notice u/s 251 Cr.PC was framed against him vide order dated 06.10.2021, to which he pleaded not guilty and claimed trial. In the defence recorded u/s 251 Cr.P.C. on the same date, the accused stated that in relation of trust with complainant, Digitally signed by ROHIT CC NI ACT 1192/2021 Page No. 4 of 28 ROHIT KUMAR Raj Kishore Uppal Vs. Mukesh Taneja KUMAR Date:

2023.01.30 16:47:26 +0530 he had given signed cheques, few blank paper and one stamp paper and cheque in question is on of that cheque. He further states that he know the complainant. He admits his signature on cheque in question. Accused states that he had not filled the particulars on cheque in question including the date date and name of payee. Accused admits the receiving of legal demand notice.

12. In support of his case, the complainant- Raj Kishore Uppal has examined himself as CW-1 and presented the following documents:

(i) Ex. CW-1/2 Copy of bank statement of the complainant bank from 01.01.2018 to 15.07.2020

(ii) Ex.CW-1/3 Copy of loan agreement and receipt dated 08.11.2019

(iii) Ex.CW-1/4 Cheque in question bearing no.

544095 dated 15.12.2020 for an amount of Rs. 6,35,000/-

(iv) Ex. CW-1/5 (colly) Return memos dated 18.12.2020 and 01.01.2021

(v) Ex. CW-1/6 (colly) Copy of legal demand notice dated 13.01.2021 and Original speed post receipt and tracking report to legal demand notice.

(vi) Ex. CW-1/7 (colly) Reply to legal demand ROHIT KUMAR CC NI ACT 1192/2021 Page No. 5 of 28 Digitally signed by Raj Kishore Uppal Vs. Mukesh Taneja ROHIT KUMAR Date: 2023.01.30 16:47:32 +0530 notice dated 27.01.2021.

(vii) Ex CW-1/D1 Bank account statement of his son.

(viii) Ex. CW-1/D2 copy of his ITR, financial year 2018-19.

13. During his examination in chief, complainant/CW-1 has reiterated the contents of his complaint. He was duly cross examined by the Ld. Counsel for the accused and in his cross examination, CW-1 stated that he is 12th pass and at present his age is 51 years. He is living in Delhi for the last 45 years. At present he works as a property consultant and prior to that he had a printing business. He is living at the address since the past 45 years and he lives on the top floor. Complainant states that he knows the accused- Navneet Taneja through their common friend Mr. Narayan. He (Narayan) is also his neighbor. Complainant states that he has one son who is doing an IT course from Canada. His son had gone to Canada for studies in February, 2019. Complainant states that he does not exactly remember the amount spent in sending his son to abroad for the studies but as per him, it must be around Rs. 6-7 lacs. Complainant states that he has not taken any loan for the studies of his son. Complainant further states that he had taken personal loans several times for the purpose of his business and other requirements. During cross on following questions complainant/CW-1 gives following answers:

ROHIT KUMAR Raj Kishore Uppal Vs. Mukesh Taneja Date: 2023.01.30 16:47:37  
+0530 Question: Did you take any loan in 2019?

Answer: I do not remember if I had taken a loan in 2019.

Question: Did you take any loan in March?

Answer: I may have taken.

14. During the cross examination of CW-1, CW-1 admits that the entry dated 27.03.2019 of Ex.CW-1/2 is the loan availed by him from Muthoot Finance to the tune of Rs. 5,01,875/-. But he further states that he did not take this loan for the Education of his son. He does not remember if he had transferred 1,50,000/- to his son's account the following day. CW-1 states that he needs to check his son's account. During further cross examination, CW-1 states that Mr. Narayan had introduced me to the accused in 2017-2018. (Vol: The introduction was related to Narayan's Wife Garment business and accused's garment business). CW-1 states that he had also occupied his(accused) rented flat for 6-7 months in 2016-2017. He had also given Rs. 5,00,000/- to his brother Mr. Mukesh Taneja in November, 2019. CW-1 further states that before issuing the legal demand notice to the accused for the dishonourment of the cheque, he had given all the details regarding all the transactions between him and the accused person to his advocate. He had read the notice before it was dispatched to the accused. CW-1 denied the suggestion that the transactions dated 28.03.2019, 02.04.2019 and 04.04.2019 is an afterthought and for this reason he had not disclosed this at the time of issuance of legal notice to his advocate. CW-1 during Digitally signed by ROHIT ROHIT KUMAR KUMAR Date:

2023.01.30 CC NI ACT 1192/2021 Page No. 7 of 28 16:47:43 +0530 Raj Kishore Uppal Vs. Mukesh Taneja cross admits that except the signature everything on the cheque has been written in his handwriting. CW-1 further denied the suggestion that the loan agreement, except the stamp paper, were blank at the time of the signature by the accused person. He further states that the documents were complete in all aspect before the accused put his signatures on it. (Vol: All the documents were shown to the accused person before he signed it).

15. During the cross examination, CW-1 was confronted with Ex.CW-1/3 (page 29), thereon, CW-1 admits that the entries of transaction are handwritten and are written by him. The handwritten entries/ transactions may have been written after the accused put his signatures on the documents.

During the cross examination, court asked this question :

Court Question: Were these entries written in the presence of the accused?

Answer: Yes they were written in his presence but after he affixed his signatures on the documents.

16. CW-1 further states that after writing the entries at page no. 29 of CW-1/3, he did not get it countersigned by the accused. CW-1 denied that suggestion that he is stating falsely that he has made the handwritten entries in the accused's person albeit after his signatures. He further denied that suggest that after getting the legal notice issued he has studied his bank statement and matched some entries to show that the cash transaction was done in April, 2019. CW-1 admits that there is no documentary proof Digitally signed by ROHIT ROHIT KUMAR KUMAR Date:

Raj Kishore Uppal Vs. Mukesh Taneja 2023.01.30 16:47:49 +0530 for cash transactions to the accused Navneet Taneja dated 28.03.2019, 02.04.2019 and 04.04.2019. CW-1 submits that he used to file ITR prior to Covid. He had filed ITR till 2019-2020.

He does not lend money to people against interest. He further denied the suggestion that he have lent only Rs. 46,000/- to the accused which has been received back and that the said loan was not on the instance or reference of Narayan. Further denied that Narayan Kumar is a planted witness. Further denied that Mr. Narayan Kumar has never met the accused person. CW-1 states that he has not done any written documentation nor had he received any cheque as security at the time of giving the alleged loan in March-April, 2019. He had not sent any demand notice to the said Narayan on whose guarantee he had allegedly given the loan to the accused. He had also not discussed/demanded the same from Narayan over SMS/ Whatsapp/ Email from April- November, 2019 or even later. Further denied that he was not in a financial capacity to give anyone a loan of Rs. 5,00,000/- without any documentation or security from anyone.

17. During cross examination, CW-1 brought the Bank account statement of his son which was Exhibited as Ex CW- 1/D1. He also brought the copy of his ITR, financial year 2018- 19 which was Exhibited as Ex. CW-1/D2. CW-1 further denied the suggestion that he has purposefully not given the bank account statement of his son Himanshu of the relevant period of early 2019. Vol: My son has only one bank account which I have provided.

ROHIT	KUMAR
KUMAR	Date: 2023.01.30 16:47:55 +0530

Raj Kishore Uppal Vs. Mukesh Taneja

18. CW-1 states that he wasn't ready to advance loan to Mukesh Taneja but on the insistence of Navneet Taneja and Narain, he agreed to give him the loan. They offered to give cheque and enter into an agreement for loan. CW-1 states that the stamp paper of the agreement for Navneet Taneja and Mukesh Taneja was purchased by him. CW-1 further states that he alone paid the expenses of typing, printing and notary of the agreements between him and Mukesh Taneja and Navneet Taneja respectively. CW-1 got it notarized near his residence by one Sh. Raj Kumar, Notary Public. Further states that It was the said notary was entered into register and was signed by accused persons. CW-1 admits that the loan agreements were notarized with blank entry on receipts (CW-1/3, page 29 of the file ie. Receipt), further states that It was done so because the dates of entry were not final at that time. CW-1 denied the suggestion that the accused Mukesh Taneja and Navneet Taneja never offered the cheque instead CW-1 had demanded them for security of loan amounts of Rs. 46,000 approx and Rs. 1,56,000 approx for Mukesh Taneja and Navneet Taneja respectively. Further denied that accused Navneet Taneja and Mukesh Taneja had returned the loan amount of Rs. 1,56,000/- approx taken by him, by cash. It is further denied that all these small little transactions

between him and the accused Navneet Taneja and Mukesh Taneja were concluded on mutual understanding. Further denied that the alleged loan agreement was signed in blank by the accused Navneet Taneja and Mukesh Taneja, more specifically the handwritten entries in the receipt were written/added after the ROHIT by ROHIT KUMAR KUMAR Date: 2023.01.30 16:48:02 +0530 Raj Kishore Uppal Vs. Mukesh Taneja signatures of the accused Navneet Taneja and Mukesh Taneja were obtained on their respective agreements. Further denied that accused Navneet Taneja and Mukesh Taneja have no liability towards CW-1 and the legal demand notice was issued under malafide intention.

19. Complainant/CW-1 brought CW-2 as his witness. CW-2 was crossed examined by counsel of accused. CW-2/Narayan Kumar during his cross examination states that he is the witness in the loan agreement and receipt which was signed in front of him at his office at 6/108, DDA Flats, Madangir, New Delhi- 110062. CW-2 states that he introduce the complainant and the accused in the year 2018 since he knew both of them as both of them used to visit his office in Madangir often. CW-2 states that Navneet has a garment shop in Madangir Market. CW-2 states that he had gone to his shop once as CW-2's wife is running a boutique as our idea was also to open a shop for children's clothes. That is how CW-2 develop friendship with Navneet and we used to visit each other. CW-2 states that Around 2019, Navneet stated that he required Rs. 10,00,000/- to expand his business and also asked him if he know somebody who can help Navneet with these funds. CW-2 states that he contacted his friend circle regarding the financing of Rs. 10,00,000/- to Navneet and in this connection he contacted the complainant- Sh. Raj Kishore Uppal, whom he know since year 2006. CW-2 states that Mr. Uppal asked him that since when do you know Navneet. To which he replied that it is his surety and Navneet shall return the money. He also told him informally that if he/accused does ROHIT by ROHIT KUMAR KUMAR Date: 2023.01.30 16:48:09 +0530 Raj Kishore Uppal Vs. Mukesh Taneja not return the money, he shall do the same. CW-2 states that It was decided between complainant and him that they shall give Rs. 5,00,000/- to Navneet and Rs. 5,00,000/- to Mukesh and sign an agreement. CW-2 called both Navneet and Mukesh to his office and also Mr. Uppal. CW-2 states that the money to Navneet was given in phases ie. Rs. 1,80,000/- cash on 28.03.2019, Rs. 1,50,000/- on 02.04.2019 and Rs. 1,24,000/- on 04.04.2019. CW-2 states that an IMPS of Rs. 46,000/- was also sent from Mr. Uppal's account to Navneet's Bank account. Further states that the money to Navneet was initially given for a period of 3 months and was further extended for a period of 4 months. Thereafter Navneet requested for further extension of the loan for a period of 1 year. The agreement was signed on 08.11.2019 in CW-2 office. CW-2 states that Mr. Uppal gave Rs. 5,00,000/- in cash to Mukesh Taneja on 01.11.2019. The agreement between Mr. Uppal and Mukesh Taneja was signed on 08.11.2019. Since he was the surety, he had counted the cash amount and handed the money to both the accused.

20. CW-2 states that Mr. Uppal contacted him 3-4 times every month thereafter and informed him that both the accused persons are not returning the money. After some time, Mr Uppal informed him that the garment shop of Navneet and Mukesh had closed. Mr. Uppal had taken 5 cheques each from each of them. CW-2 further states that cheques were taken when the payment was done to them. Thereafter, Mr. Uppal started the legal proceedings Digitally against the accused persons. signed by ROHIT ROHIT KUMAR KUMAR Date:

2023.01.30 16:48:15 +0530 Raj Kishore Uppal Vs. Mukesh Taneja

21. CW-2 states that the office that he is referring is of his wife who is running the boutique shop. CW-2 states that he assists his wife and he does not have any other source of income. His wife is running the boutique shop since 2014. CW-2 states that he has done more than 60 types of businesses since 1993. Prior to 2014, he was into printing Flex Business from 2010-13. CW-2 states that the address mentioned in testimony is his residential address on 1st and 2nd floor whereas the ground floor is the boutique. He is living at this address since 2013. He have changed his address 6-7 times in the DDA flats Madangir Area since 2002. He am 12th Pass. CW-2 admits that Raj Kishore Uppal/complainant had informed him that he has been tenant to Mr. Navneet Taneja and Mr. Mukesh Taneja. Mr. Raj Kishore Uppal had informed him that he had been tenant to Mr. Navneet Taneja and Mr. Mukesh Taneja in 2017-2018. CW-2 states that the Idea of expanding our boutique with children's clothes with the help of accused Navneet Taneja did not fit for various reasons. CW-2 states that he used to frequently meet Navneet once in 15-20 days. The 3 transactions dated 28.03.2019, 02.04.2019 and 04.04.2019 mentioned in his chief above are all cash transactions. One IMPS of 46,000/- was also done between the dates 28.03.2019 and 02.04.2019. IMPS was not done in his presence. Mr. Raj Kishore uppal had informed him that he has made the payment of IMPS on the first date ie. 28.03.2019. It is admitted that he did not make written communication with Mr. Navneet Taneja after the expiry of 3 months of alleged loan afforded to him in March- April, 2019. He did not send any legal demand notice after Digitally the signed by ROHIT ROHIT KUMAR KUMAR Date:

2023.01.30 16:48:21 +0530 Raj Kishore Uppal Vs. Mukesh Taneja expiry of 3 months of alleged loan as there was no occasion to do so since we all were friends. CW-2 Again said, we had also extended the loan period for 4 months. He had not given any security or cheque to Raj Kishore Uppal as a guarantor to the loan. He has not send any sms or whatsapp to Navneet Taneja for demand of loan. He used to directly visit his shop whenever required. The shop of the accused Navneet Taneja and Mukesh Taneja was closed in the end of year 2021. The same was conveyed to him by the complainant and he had also personally visited. CW-2 states that in November, 2019 he did not alert the complainant to not give loan to Mukesh Taneja as his brother had not returned the alleged loan because he had huge trust on Navneet and Mukesh. He had trustworthy friendship with Navneet. He had more interactions and friendship with Navneet than Mukesh. On these following questions CW-2 replied:

Question: How many kids does Mr. Navneet and Mr. Mukesh have?

Answer: I am not aware as I had no family relations.

Question: What is the phone no. of Mr. Navneet Taneja and Mr. Mukesh Taneja?

Answer: I do not remember.



The witness is now asked by Ld. Counsel for the accused if he is carrying his mobile phone to which he said yes. He is further asked to check his mobile phone and give the phone no. of Navneet Taneja and Mukesh Taneja to which the witness said that his mobile no. has changed and therefore it is not saved in his ROHIT by ROHIT KUMAR KUMAR Date: 2023.01.30 16:48:28 +0530 Raj Kishore Uppal Vs. Mukesh Taneja mobile. 9899545858 was my old no.

Question: When did the complainant inform you about the filing of present case?

Answer: We were together since the beginning and I was fully aware when this case was filed.

22. CW-2 states that the complainant had not asserted any grievance or made any complaint against him with respect to non-return of the alleged loan despite the same being advanced on his assurance and guarantee. His wife never visited the shop of Navneet and Mukesh Taneja nor she interacted or met when the accused persons allegedly came over to her office. He only assists his wife in her boutique business to the extent of banking and marketing. All important decisions related to designing, kind of products in the boutique, expansion of business and pricing etc are managed by his wife alone without any interference from my side. CW-2 was further cross examined on 11.04.2022 therein he states that in both the cases he has got prepared evidence by way of affidavit under his instructions by his counsel. The affidavit dated 17.12.2021 in matter titled as Raj Kishore Uppal Vs. Navneet Taneja is Exhibited as Ex. CW 2/DI. The affidavit dated 15.02.2022 in matter titled as Raj Kishore Uppal Vs. Mukesh Taneja is Exhibited as Ex. CW-2/D2. The said affidavits were drafted, prepared, signed and attested at the office of the Oath Commissioner at DDA Market, Khanpur Main Road. At the time of execution of this affidavit only I and the Oath commissioner Sh. Raj Kumar was present in his office. No one else was present ROHIT KUMAR KUMAR Date:

2023.01.30 16:48:35 +0530 Raj Kishore Uppal Vs. Mukesh Taneja as an advocate by that time. CW-2 states that he may have appeared as witness in Saket Court in other cases as well. CW-2 were asked following questions, thereon he relied:

Question: Are you accused in any case in Saket Court?

Answer:- There are false cases against me all of which are decided. Again said, there are still 2-3 cases pending against me. These 2-3 cases are criminal as well as civil against me related to Property and money recovery. (Ld. Counsel for the complainant objected on the point of relevancy).

Question: Do you wear advocate like attire (Black Pant, White shirt, Black Coat and Formal Black shoes which the witness is wearing today. Always or when you visit the court?

Answer:- I always wear these kind of clothes only. I like black and white colour in my clothes. (objected by the Ld. Counsel for the complainant on the point of relevancy).

23. CW-2 denied the suggestion that he never met Mukesh Taneja and Navneet Taneja and that is the reason he is not able to tell basic informations about them. CW-2 states that Raj Kishore Uppal had informed him that he had money available to tender the loan to Mukesh Taneja as he had sold a property one month back. The said property was at the top floor of the residence of the complainant. Vol: The loan to Navneet Taneja was given out of the funds lying with the complainant.

24. CW-2 further denied the suggestion that he has not ROHIT KUMAR Date:

KUMAR 2023.01.30 16:48:41 +0530 Raj Kishore Uppal Vs. Mukesh Taneja witnessed the said agreements or that the same were executed in his presence. He further denied the suggestion that Mr. Raj Kishore Uppal handed over Rs. 5,00,000/- on different Occasions to Mr. Navneet Taneja and Rs. 5,00,000/- to Mr. Mukesh Taneja in his presence or otherwise. CW-2 states that he is not aware that the oath commissioner who attested his Exhibits Ex. CW- 2/DI and Ex. CW-2/D2, was Shri Sanjay Kumar and Shri S K Bharti respectively and not Shri Raj Kumar as told by me above. He is also not aware if the said oath commissioners have chambers/Seat in Saket only. CW-2 states that his advocate was also present at the time of attestation of my affidavit.

25. CW-2 further denied the suggestion that that he is a planted habitual witness. It is further denied that he has joined hands with the complainant to give false evidence in his favor to extort money from the accused persons by aiding and conspiring to file the present frivolous complaints against the accused persons. Further denied that he represents as an advocate in the locality to command authority and respect to engage in such litigations and extort money from innocent litigants.

26. After closing of CE, statement of accused u/s 313 of Cr.P.C was record, therein accused states that the cheque in question was a blank cheque taken from him by the complainant. The agreement also is a forged document and his signatures were taken on a blank papers. He does not dispute the bank statement filed by the complainant. He only had a liability of Rs.1,56,000/-

towards the complainant which also i have cleared by making the ROHIT by ROHIT KUMAR KUMAR Date: 2023.01.30 16:48:48 +0530 Raj Kishore Uppal Vs. Mukesh Taneja payment in cash to him. At present, i do not have any liability towards the complainant. Multiple signed blank cheques were taken from me by the complainant. I do not know Mr. Narayan Kumar and i have never met him prior to this case as well. My blank signed papers and cheque have been misused by the complainant.

27. After recording of statement u/s 313 of Cr.P.C., DE was conducted. Accused had filed an application u/s 315 of Cr.P.C and requested to allow himself as a witness. Thereafter, Accused was examined as DW-1, therein he states that he had a garment shop in Madangir. He was acquainted with the complainant since the last 10-12 years and complainant was also his tenant. The complainant was also engaged in the business of giving loan on interest. In the year, 2019 he had asked for some money from the complainant as loan. He had given around Rs.1,56,000/- by way of account transfer to me. He has already returned the said Rs. 1,56,000/- by way of cash to the complainant. He had demanded cheques from him. Accused further states that he had requested complainant to return the cheques when he made the payment. Further states that in March-April, 2020, just before lockdown, when he had requested complainant to return the cheques as he had made the complete payment, the complainant assured him that he had already torn those cheques. He further states that when accused again insisted to return the cheques, he asked him to trust. Upon trust, accused did not press any further. Thereafter, he received the legal demand notice of this case. Digitally signed by ROHIT ROHIT KUMAR KUMAR Date:

2023.01.30 16:48:54 +0530 Raj Kishore Uppal Vs. Mukesh Taneja

28. DW-1 was examined on 14.11.2022, therein DW-1 states that he does not remember the duration in which the loan of Rs. 1,56,000/- was return to the complainant. But same was taken in the year 2019. DW-1 does not remember the month in which the loan of Rs. 1,56,000/- was taken. DW-1 states that no agreement was executed between him and complainant for the said loan. He states that at the time of loan his signatures were taken on the blank papers and complainant took 3-4 blank cheques from him. He further states that he does not remember whether cheques were signed by him. He had received legal demand notice on behalf of the complainant. He does not remember whether reply was sent for the legal notice on his behalf. DW-1 admits that no written communication was given to the complainant for returning the cheques and blank papers after the payment of Rs. 1,56,000/-.He further states that he does not remember whether he made request to bank for stop the cheques. DW-1 denied that suggestion that he had taken the loan of Rs. 5 lakh from the complainant. It is further denied that at the time of loan an agreement was executed between him and complainant.

29. Afterwards, final arguments were heard on behalf of both the parties and after hearing the arguments, trial was concluded. I have heard the counsels for both the parties, perused the record and have gone through relevant provisions of the law.

#### POINTS FOR DETERMINATION

30. Whether the complainant has been able to establish ingredients of offence punishable under section 138 of the ROHIT KUMAR KUMAR Date:

2023.01.30 16:49:01 +0530 Raj Kishore Uppal Vs. Mukesh Taneja Negotiable Instruments Act, 1881 beyond shadow of reasonable doubt against the accused or not?

## Findings of the Court

31. 34. Before delving into the facts of the case, it is apposite to bear in mind the law with respect to section 138, Negotiable Instrument Act. In order to prove his case under section 138 N I Act, the complainant must prove the following facts

i) The accused issued a cheque on a bank account maintained by him

ii) The said cheque must have been issued, wholly or partly, in discharge of a 'legal debt or other liability'

iii) The said cheque was presented before the bank within 3 months from the date of issuance and was dishonoured

iv) The payee issued a legal demand notice, within 30 days of receipt of information of dishonour of the cheque

v) The drawer failed to make payment within 15 days of receipt of the said legal demand notice

32. Further, the NI Act raises two important legal presumptions in favour of the holder of the cheque as soon as the execution of cheque is proved. As per Section 118(a), NI Act, it shall be presumed that every negotiable instrument was 'made, accepted, transferred, negotiated or endorsed for consideration, ROHIT KUMAR KUMAR Date:

2023.01.30 16:49:07 +0530 Raj Kishore Uppal Vs. Mukesh Taneja unless the contrary is proved'. Furthermore, as per section 139, NI Act, it shall be presumed that 'the holder of cheque, received the cheque for the discharge, in whole or in part, of any debt or other liability, unless the contrary is proved.'

33. The principles with respect to above mentioned presumptions, have been succinctly laid down in Para 25 of the judgment by Hon'ble apex court in Basalingappa v. Mudibasappa (2019) 5 SCC 418, which lays down as under-

" 25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by

reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a ROHIT by ROHIT KUMAR KUMAR Date: 2023.01.30 16:49:14 +0530 Raj Kishore Uppal Vs. Mukesh Taneja persuasive burden."

34. In the present matter, during the course of trial, the accused has admitted his signatures over the cheque in question and as discussed previously, the legal presumption u/s 118 (a) /139 of the N I Act are attracted to the present case and the burden of raising a probable defence, rests upon the accused.

35. On merits, it has been argued on behalf of the complainant that the complainant has established his case by probing the transactions and the case of the complainant has gone unrebutted. Since the accused has admitted the signature on cheque in question, the presumptions u/s 118(a) and s. 139 of NI Act aid the case of complainant. It is argued by Ld. Counsel for the complainant that accused was introduced to complainant by CW-

2. It is argued that complainant was reluctant initially but after much persuasion finally relented, complainant gave Rs. 5,00,000/- to accused on 01.11.2019 as he sold the top floor of H.No. 39/1324, DDA Flats, Madangir, New Delhi-110062 to Ms. Nisha Chouhan for Rs. 15 lacs. Rs. 7.75 lacs were received by cheque and the balance by cash.

36. Per contra, it has been argued on behalf of the accused that the complainant has failed to prove, beyond reasonable doubt, a legally enforceable debt in his favour and the liability of the accused. It is argued on behalf of the accused that present case is completely a false and frivolous case. complainant has misused the cheque of the accused in this matter. Accused had taken ROHIT KUMAR KUMAR Date:

2023.01.30 16:49:20 +0530 Raj Kishore Uppal Vs. Mukesh Taneja Rs.1,56,000/- only from the complainant and same has been returned to complainant. Further argued that at the time of this loan, complainant took signatures of the accused on blank papers and cheques, and same were never returned despite the payment of Rs. 1,56,000/-. Further argued that complainant states in his affidavit he had given Rs. 5,00,000/- to accused on 01.11.2019 after he received the payment form Ms. Nisha Chouhan. However, it is clear from the statement of bank account of complainant that Rs. 7,75,000/- were credited in the account of complainant on 02.11.2019. so, how it is possible that money was given to accused one day prior before receiving the payment of Rs. 7,75,000/- from Ms. Nisha Chouhan as alleged on 01.11.2019. Ld. Counsel further continued and argued that Ex.CW1/3 is a alleged loan agreement between complainant and accused. But it is important to note that all the agreement was in printed form but entry in receipt of the Ex. CW1/3 was in hand written. He argued that it is admitted by the complainant that entry was done in hand written and after the signature of the accused on loan agreement and same was not

countersigned by accused. It is argued that entry was false and manipulated. Ld. Counsel further argued that it is also important to mention that in legal demand notice, complainant in his para no. 2 of the legal demand notice Ex. CW1/6 stated that loan was given through NEFT/RTGS only. However, now in complaint complete different story is brought.

37. Before parting with the judgment, it is apposite to mention that it is settled law from the case laws- K Prakash Vs. T K ROHIT by ROHIT KUMAR 16:49:26 Date: 2023.01.30 +0530 Raj Kishore Uppal Vs. Mukesh Taneja Sundaram (2008) 1 SCC 258, Krishna Janardhan Bhat Vs. Dattatraya G Hegde AIR 2008 SC 1325 which provide that the burden of proof upon the accused in cases u/s 138 of the N I Act, has to be discharged as per the standards of 'preponderance of probabilities', while, the complainant has to prove his case 'beyond reasonable doubt'.

38. In this present matter, the court has noticed various inconsistency and infirmities in the case of the complainant. Complainant states in legal demand notice Ex. CW1/6 that loan was given through RTGS/NEFT only, but it becomes relevant to mention that complainant in his affidavit and testimony before court says that Rs. 5,00,000/- were given to accused by way of cash. Furthermore, accused has admitted the transaction of Rs. 1,56,000/- only. As per the accused he has repaid Rs.1,56,000/- to the complainant.

39. It is pertinent to mention that document Ex.CW1/3 was attested by notarised though, but there is no entry number of notary register in Ex.CW1/3. It is further important to mention that CW-1 in his cross examination states that the stamp paper of the agreement for Navneet Taneja and Mukesh Taneja was purchased by him, he alone paid the expenses of typing, printing and notary of the agreements between him and Mukesh Taneja and Navneet Taneja respectively. He further states that he got it notarised near his residence by one Sh. Raj Kumar, Notary Public. But it becomes relevant to mention here that perusal of Ex.CW1/3 shows that agreement was not got attested by Notary Digitally signed by ROHIT ROHIT KUMAR Date:

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Raj Kishore Uppal Vs. Mukesh Taneja

Raj Kumar but same was done by some other notary person namely Ram Sunder. The testimony of the complainant and his witness CW-2 before the court are completely different from the facts of the agreement, legal demand notice and other documents.

40. It is pertinent to mention that in this case, while attestation of loan agreement, the procedure relating to notarisation under the Notaries Rules, 1956 framed under the Notaries Act, 1952 has not been followed. Under Rule 11(2), the notary is required to maintain a notarial register in prescribed form No. XV. The form shows 11 columns, including the column of the serial number, date, name of

the notarial act, name of the executant, contents of the documents, notarial fee, signatures of the executant and the notary. The purpose of this rule is to relate each notarised document to the serial number in the notarial register required to be maintained by each notary in the prescribed form. Hence the serial number of the entry must be put on the document to collate the entry with the document. In case of dispute the factum of notarisation would have to be separately proved since, unlike registration, there is no presumption of execution of a notarised document. It is seen that in this case, the notary has not shown the serial number and the register number in which the entry is made for the Ex.CW1/3. Moreover, as per accused alleged agreement Ex.CW1/3 was signed in blank by the accused Navneet Taneja and Mukesh Taneja, more specifically the handwritten entries in the receipt were written/added after the signatures of the accused Mukesh Taneja and Navneet Taneja were obtained on their respective agreements. Since, the ROHIT KUMAR Date:

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Ex.CW1/3 was not duly notarised in accordance of rule 11 (2), had it been done, notarised entry number would have been mentioned on Ex. CW1/3, this has created a doubt on the authentication of the document/EX. CW1/3. In the opinion of the court, EX.CW1/3 is a very disputed document and same cannot be relied.

41. Moreover, complainant states that he gave Rs. 5,00,000/- to the accused on 01.11.2019, but complainant has not filed on record the ITR for the assessment year 2020-21, as per the complainant, he would file ITR prior covid and he had filed ITR till 2019-20 only. Perusal of ITR for the assessment year 2019-20 filed by the complainant exhibited as Ex. CW-1/D2 shows the gross total income of the complainant was Rs. 3,02,800/- only and for the assessment year 2018-19 it was Rs. 2,92,600/-. After perusal of ITR records filed by complainant, the court is of the opinion that complainant was not in financial capacity to give loan of Rs. 5,00,000/- to the accused. As per the complainant, he arranged Rs.5,00,000/- from one person namely Ms. Nisha Chouhan after selling his property and accused was given Rs. 5,00,000/- on 01.11.2019. During cross examination, CW-1/Complainant states that he is living at 39/1324, DDA Flats, Madangir, New Delhi 110062 since 45 years and he lives on the top floor. But this testimony of the complainant is inconsistent to the fact mentioned in para no. 3 of evidence affidavit of Complainant/CW-1, therein CW-1 states that he had sold the top floor of H. No. 39/1324, DDA Flats, Madangir, New Delhi- 110062 to Ms.Nisha Chouhan for Rs.15 lacs. This inconsistency ROHIT KUMAR Date:

KUMAR 2023.01.30 16:49:44 +0530 Raj Kishore Uppal Vs. Mukesh Taneja has created a doubt regarding the transaction of Rs.5,00,000/- loan. Moreover, complainant has not brought Ms. Nisha Chouhan as witness and has not brought the documents of the property for establishing the fact that property was sold and out of the consideration of Rs.15,00,000, Rs.5,00,000/- were given to accused as loan. Furthermore, from perusal of statement of account of complainant, it is reflected that Rs. 7,75,000/- were got credited in the account of complainant on 02.01.2019 only not on 01.01.2019, and same were transferred by Ms. Nisha Chouhan. This court is of the opinion that complainant has failed to establish the fact of lending Rs.5,00,000/- to the accused.

42. Considering the above facts and circumstances in toto, this court is of the opinion that the complainant has not been able to prove the transactions of Rs. 5,00,000/- with the accused and accused has been able to rebut the presumption of legally enforceable debt to the amount of cheque in question. Therefore, the onus had shifted back upon the complainant to prove the ingredients of the offence under section 138 of the NI Act against the accused beyond reasonable doubt. The complainant has failed to discharge the said onus and prove beyond reasonable doubt, the fact of a legally enforceable debt and outstanding upon the accused.

## CONCLUSION

43. Thus, on account of above appreciation of facts, evidences and materials on record, this court is of the considered opinion that the complainant has failed to prove his case on the ROHIT by ROHIT KUMAR KUMAR Date: 2023.01.30 16:49:51 +0530 Raj Kishore Uppal Vs. Mukesh Taneja touchstone of 'beyond reasonable doubt'. On the contrary, the accused has succeeded in raising a probable defence as per the yardstick of 'preponderance of probabilities'. Consequently, the accused- Mukesh Taneja is acquitted under the accusation of committing the offence u/s 138 N I Act.

44. At this stage, it is pertinent to mention that in this case, interim compensation on the application U/s 143A of NI Act, was allowed. Therefore, in accordance of S. 143A (4), Complainant is directed to file indemnity bond of interim compensation amount if paid by accused to complainant.

45. This judgment contains 28 pages. This judgment has been signed and pronounced by the undersigned in open court.

46. Let a copy of the judgment be uploaded on the official website of District Courts, forthwith.

ANNOUNCED IN THE OPEN COURT ON this 30th DAY OF JANUARY 2023 ROHIT by ROHIT KUMAR KUMAR Date: 2023.01.30 16:49:57 +0530 (ROHIT KUMAR) MM (NI ACT) Digital Court-02 (South)/Saket Courts, New Delhi/ 30.01.2023 Raj Kishore Uppal Vs. Mukesh Taneja