

Anil Kumar Singh vs . Mohd. Shahid on 20 February, 2021

IN THE COURT OF SH. FAHAD UDDIN, MM-04, SHAHDARA DISTRICT,
KARKARDOOMA COURT, DELHI.

ANIL KUMAR SINGH VS. MOHD. SHAHID

Case No. : 158/16
PS : M.S. Park
U/s : 138 N.I Act

a) Registration no. of the case : 158/16

b) Name & address of the complainant : Sh. Anil Kumar Singh
S/o Late Sh. Shishpal Singh
R/o E-426, Gali No. 5, Hardev Puri
Delhi-110093.

c) Name & address of accused : Mohd. Shahid
S/o Sh. Shabir
R/o H.No. 413, Pocket-0, Sunder Nagari,
Delhi-110093.

d) Date of Commission of offence : 13.03.2012

e) Offence complained off : U/s 138 N.I Act

f) Plea of the accused : Pleaded not guilty/claimed trial

g) Final Order : Convicted

h) Date of such order : 20.02.2021

Date of Institution : 03.05.2012

Final Arguments heard on : 22.01.2021

Judgment Pronounced on : 20.02.2021

JUDGMENT

1. Vide this judgment, I shall dispose of the present complaint case filed by the complainant (Anil Kumar Singh) against the accused (Mohd. Shahid) U/s 138 NI Act. Brief facts necessary for the disposal of the present case may be described as under:-

It is the case of the complainant as set out in the complaint U/s 138 N.I. Act that the complainant and accused were well known to each other and were having cordial relations. In the month of March 2011, the accused had approached the Case No.

158/16 Anil Kumar Singh Vs. Mohd. Shahid 1/23 complainant and asked for a friendly loan of Rs 50,000/- which was given in terms of cheque bearing no. 722662 dated 22.03.2011 drawn on United Bank of India Branch, Gagan Cinema , Nand Nagri, Delhi and same was recorded in written by executing an agreement dated 22.03.2011. Further in the month of April 2011, accused once again approached the complainant and asked for another friendship loan of Rs 75,000/- which was also given by the complainant and same was recorded in written by executing an agreement dated 15.04.2011 for Rs 1,45,000/-. Thus for discharge of the liability and to repay the said amount, the accused issued a cheque for Rs 1,45,000/- vide cheque no. 361931 dated 20.12.2011 drawn on HDFC Bank Ltd. , Yamuna Vihar, New Delhi with the assurance that the said cheque will be encashed on its presentation. However, when the complainant presented the said cheque for encashment through his banker, the same was returned unpaid/dishonoured by the banker of the accused with remarks "Account Closed" vide cheque returning memo dated 13.03.2012. The said information was received by the Complainant on 16.03.2012 from his banker. The complainant then contacted the accused to make the payment of the cheque in question but the accused paid no heed to the said request and therefore the complainant got issued a legal demand notice dated 26.03.2012 upon the accused through his counsel but the accused neither replied the same nor paid the cheque amount to the complainant within the time fixed and hence the present Complaint U/s 138 N.I Act has been filed by the Complainant against the accused in the said background.

2. The complainant led pre-summoning evidence and additional affidavit filed on behalf of the complainant . Vide order dated 11.05.2012, cognizance of the offence U/s 138 NI Act was taken by the Court and the accused was summoned. On appearance of the accused and compliance of the provisions of Section 207 Cr.P.C., notice U/s 251 Cr.P.C for the offence U/s 138 NI Act was framed against the accused on 27.05.2013. The accused pleaded not guilty for the offence U/s 138 NI Act and claimed trial. In his plea of defence, the accused stated that on 22.03.2011, he had taken a loan of Rs 50,000/- on the interest @ 10 % p.m from the complainant who is a professional money lender. A loan agreement was also executed between him and the complainant and a blank cheque which is in dispute in the present case was taken by the complainant as security. The accused stated that he paid the entire loan amount along with Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 2/23 agreed rate of interest to the complainant but despite his repeated requests the complainant did not return his blank cheque in question which the complainant had taken as security from him at the time of taking the loan amount. The complainant also did not destroy the loan agreement which was executed on 22.03.2011 between him and the complainant. The accused stated that he had not taken any loan amount of Rs 95,000/- from the complainant on 15.04.2011.

The agreement dated 15.04.2011 is a forged agreement and it does not bear his signatures. In legal demand notice dated 26.03.2012 as well pre-summoning evidence by way of an affidavit the

complainant has repeatedly stated that he had taken a loan of Rs 75,000/- from the complainant. Thus the complainant has filed a false case against him.

3. Prosecution/ complainant's evidence:

To prove his case against the accused, the complainant relied upon the following documents:

- (i) One Original Cheque bearing no.- 361931 dt. 20.12.2011 for an amount of Rs 1,45,000/- is Ex. CW-1/1.
- (ii) Cheque return memo dt. 13.03.2012 is Ex. CW-1/2.
- (iii) Legal demand notice dated 26.03.2012 sent to the accused is Ex. CW-1/3.
- (iv) Original Postal receipt dated 26.03.2012 is Ex. CW-1/4.
- (v) Original Agreement dated 22.03.2011 and 15.04.2011 are Ex. CW-1/5 (Colly).
- (vi) Delivery report is Mark "A".

4. To prove his case against the accused, the prosecution/ complainant got examined two witnesses. CW-1 Anil Kumar Singh (complainant himself) who tendered his evidence by way of fresh affidavit which is Ex. CW-1/A1 on court record. In his evidence by way of affidavit Ex. CW-1/A1, the complainant reiterated all the facts on oath as stated in the complaint and relied on the documents mentioned above. However, it is pertinent to mention that in his fresh affidavit which is Ex. CW-1/A1 tendered on 16.09.2013, the complainant stated that in the month of March 2011, the accused (Mohd. Shahid) had asked for a friendship loan of Rs 50,000/- which was given through cheque and recorded in agreement dated 22.03.2011 and again in the month of April 2011, accused had Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 3/23 asked for another friendly loan of Rs 95,000/- which was recorded in written by executing an agreement dated 15.04.2011 for Rs 1,45,000/-. To discharge his liability the accused issued a cheque for Rs 1,45,000/- vide cheque no. 361931 dated 20.12.2011 drawn on HDFC Bank, Yamuna Vihar, New Delhi. However, the said cheque was returned unpaid with remarks "Account Closed" vide cheque returning memo dated 13.03.2012 and despite issuance of legal notice dated 26.03.2012, the accused failed to pay the amount covered by the cheque in question.

In his cross examination, CW-1 (Anil Kumar Singh) stated that he is 8th pass. He is engaged in the business of transportation. He has one commercial vehicle (Mahindra Champion). He knew accused Mohd. Shahid because of their business relations. The accused is the sole proprietor of New Sony products and engaged in the business of production of back view mirrors of vehicle. He knew accused since 2010. He further stated that he knew the accused even prior to the year 2010 because the accused was residing in the same colony. CW-1 stated that he is not engaged in the business of money lending. He gave a sum of Rs 50,000/- as loan to the accused on 22.03.2011. At the time of

giving loan of Rs 50,000/- to the accused, he executed an agreement dated 22.03.2011 which is Ex.CW-1/5. CW-1 stated that it is correct that in para no. 3 of this document the space from point A to B is blank. CW-1 denied the suggestion that he is engaged in the business of money lending that is why he had executed the agreement dated Ex.CW-1/5. CW-1 further denied the suggestion that accused had repaid the sum of Rs 70,000/- to him i.e. principal amount as well as interest. CW-1 stated that accused Mohd. Shahid again took a sum of Rs 95,000/- as loan from him on 15.04.2011. CW-1 further stated in response to a question that accused was facing a financial crisis and he requested him for the loan of Rs 95,000/- so that he can run his factory. For these reasons, he again provided him the said loan. An agreement for the loan of Rs 95,000/- was executed between him and the accused Mohd. Shahid on 15.04.2011. CW-1 stated that he gave the loan of Rs 95,000/- by cash to accused Mohd. Shahid. The agreement was executed on the stamp paper of Rs 50/-. The stamp paper was purchased in the name of Mohd. Shahid and himself. The stamp paper was purchased from Sunder Nagri. The Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 4/23 distance of the shop of stamp vendor from his residence was about 2 and ½ kilometer. CW-1 stated that he and Mohd. Shahid went to the stamp vendor together. CW-1 stated that he did not remember if he or the accused had signed in any register when they purchased the stamp paper. CW-1 denied the suggestion that accused Mohd. Shahid had not taken any loan of Rs 95,000/- from him on 15.04.2011 or that the agreement dated 15.04.2011 which is Ex.CW-1/5 is a forged document and that the signatures of the accused on point A on the said agreement are forged signatures. CW-1 further denied the suggestion that the name and amount of Rs 1,45,000/- was not filled up by the accused Mohd. Shahid in Ex.CW-1/1 i.e. the cheque in question or that the said cheque was taken by him blank as security at the time of taking the loan of Rs 50,000/- on 22.03.2011. CW-1 stated that his counsel issued a legal notice to accused Mohd. Shahid on 26.03.2011. His Counsel explained him the contents of legal notice before sending the same to accused Mohd. Shahid. CW-1 stated that it is correct that in para no. 3 of his legal notice the loan amount is mentioned as Rs 75,000/-. His pre-summoning evidence by way of affidavit which is Ex.CW-1/A bears his signatures at point A and B. CW-1 further stated that his evidence by way of affidavit was prepared by his counsel at his instructions. His counsel had explained the contents of the same before he signed on it. CW-1 also stated that the complaint case was drafted by his counsel at his instructions and he is very much aware about the contents of the same. CW-1 stated that he is income tax payee for the last about 3-4 years. The factum of loan of Rs 50,000/- is in the knowledge of his C.A but the second loan of Rs 95,000/- was not in the knowledge of his C.A as he did not disclose the said fact to his C.A. In his further cross examination on 02.07.2015, CW-1 stated that he did not know whether the fact of loan of Rs 50,000/- had been shown in his income tax return or not. He stated that he can produce the copy of income tax return for the year 2011 in which he had advanced a loan of Rs 50,000/- to the accused. CW-1 denied the suggestion that the accused had not taken a loan of Rs 95,000/- from him. No other material fact was deposed to by CW-1 and after conclusion of his cross examination, CW-1 was discharged.

Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 5/23

5. Another witness examined on behalf of the complainant in support of his case is CW-2 namely Pushkar Raj. The said witness stated in his examination in chief conducted on 04.10.2018 that on 22.03.2011, complainant (Anil Kumar Singh) had given Rs 50,000/- by way of cheque bearing no.

722662 drawn on United Bank of India, Branch Nand Nagri, Gagan Cinema, Delhi in his presence to accused Shahid and in this regard an agreement was also executed and the same also bears his signature as a witness. The same is already exhibited as Ex.CW-1/5 (Colly) bearing his signature at point X and thereafter on 15.04.2011, the Complainant had given Rs 95,000/- in cash to the accused in his presence and in this regard agreement was also executed. Same is already Exhibited as Ex.CW-1/5 (Colly) bearing his signature at point Y.

6. In his cross examination CW-2 stated that he is graduate. He is owner of shop no. F-1, near DC office, Nand Nagari, Delhi where he was running the shop under the name and style of M/s Hiteshi Photostate & Computers. He was running the business of photocopy, lamination and typing from the said shop. He did not do the typing work himself. Raj Kumar and Adil were doing the work of typing in his shop. They did the type work at his instructions. He did not check their typing work and the customer who get the work typing himself checked the same. CW-2 stated that he knew Anil Kumar Singh (Complainant) because he was old known to him and he was also known to his father. He stated that he did not type the agreement dated 22.03.2011 Ex.CW-1/5 (Colly). He cannot tell as to who had typed the agreement dated 22.03.2011. The agreement dated 22.03.2011 was got typed by Sh. Anil Kumar Singh (Complainant) in his presence. Again said, the accused Mohd. Shahid was also present. CW-1 stated that Anil Kumar Singh brought the stamp paper on which the agreement was drafted with him. The agreement Ex.CW-1/5 (Colly) dated 22.03.2011 bears his signatures at point X. Complainant Anil Kumar Singh did not explain him the terms and conditions of the agreement before drafting the same. CW-2 stated that he read out the said agreement before he signed it. He stated that he cannot tell as to why the space from point "A to B" is blank in the agreement in question. CW-2 stated that he did not inquire from Anil Kumar Singh that the said space from point A to B had been left blank. The agreement was signed in his presence. He cannot tell as to who had signed the same first of all. CW-2 stated that he cannot tell whether the signature at point P on Ex.CW-1/5 (Colly) Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 6/23 is of accused or not. He cannot tell the cheque no. of amount of Rs 50,000/- which was paid by the complainant to the accused. The cheque was handed over by the complainant to the accused in his presence at his shop. He had appeared in the witness box at the instructions of the complainant. CW-2 stated that he did not know when this agreement dated 22.03.2011 was got notary attested. He stated that he did not appear before the Notary Public for the attestation of the said agreement. CW-2 denied the suggestion that the agreement dated 22.03.2011 is a forged and fabricated document which was prepared in the absence of the accused person.

7. In his further cross examination on 23.05.2019, CW-2 stated that he signed only one agreement. He did not remember the date of agreement. He again said that he signed two agreement in the year 2011. The agreements were executed/drafted on different dates. He did not remember the date of agreements. Agreement dated 15.04.2011 bears his signatures at point Y which is already Exhibited as CW-1/5. The agreement was typed in his shop. The agreement was typed in the presence of Anil Kumar Singh (Complainant) and Mohd. Shahid (Accused). The stamp paper was purchased by Anil Kumar Singh. CW-2 stated that he was also present at the time when the agreement was typed. He had read over the contents of the agreement before he signed it. CW-2 denied the suggestion that the accused had not signed at point A in Ex.CW-1/5 or that the signatures of accused had been forged. CW-2 further denied the suggestion that agreement dated 15.04.2011 is a forged and

fabricated document and it was never executed between the complainant and the accused persons. CW-2 stated that the agreement dated 15.04.2011 was not got attested by notary in his presence. He stated that he did not know where the agreement dated 15.04.2011 was got attested by notary. He stated that he did not know whether Mohd. Shahid (Accused) had returned the sum of Rs 50,000/- alongwith interest to the complainant or not. No other material fact was deposed to by CW-2.

8. Thereafter, on completion of evidence of CW-2, prosecution/ complainant's evidence was closed on 23.05.2019 and the matter was fixed for recording of statement of accused U/s 313 Cr.P.C.

Case No. 158/16

Anil Kumar Singh Vs. Mohd. Shahid

7/23

9. Statement of Accused:

On 18.07.2019, the statement of accused Mohd. Shahid U/s 313 Cr.P.C. r/w Section 281 Cr.P.C was recorded whereby all the incriminating evidence was put to the accused. In his statement recorded U/s 313 Cr.P.C. r/w Section 281 Cr.P.C, the accused stated that the complainant had misused the blank cheque in question which was taken by him as security. He stated that he did not receive any legal notice. The complainant has filed a false case against him. He stated that he is innocent. He has no legal liability towards the complainant. As a matter of fact, he took a loan of Rs 50,000/- @ 2 % p.m from the complainant. The complainant got executed the agreement dated 22.03.2011 alongwith one blank signed cheque with him. The accused stated that he repaid the sum of Rs 70,000/- as principal amount and interest to the complainant. Despite his various requests the complainant did not return his blank signed cheque. The agreement dated 15.04.2011 is a forged document and it does not bear his signatures. He never took any amount of Rs 95,000/- from the complainant. The accused wished to lead defence evidence in his statement U/s 313 Cr.P.C. However, despite repeated opportunities given the accused did not lead DE in the present case and on statement of accused recorded on 22.12.20, the DE was closed and matter was fixed for final arguments.

10. It is to be noted that during the course of proceedings the Counsel for the accused had also moved an application to obtain opinion from hand writing expert with regard to signatures of accused on disputed agreement dated 15.04.2011 and vide detailed order passed on 06.11.2019, the said application of the accused was dismissed by the Court.

11. Final arguments.

Thereafter final arguments were addressed by Ld. Counsel for complainant as well as Ld. Counsel for accused on 22.01.2021. In the final arguments addressed by Ld. Counsel for complainant, the counsel for complainant submitted that on the basis of evidence (oral as well as documentary), the complainant has been able to prove his case against the accused beyond reasonable doubt and the accused be convicted for the offence punishable U/s 138 NI Act and be punished in accordance with law. On the other hand, Ld. Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 8/23 Counsel for accused submits that no case U/s 138 NI Act is made out against the accused and the accused be acquitted for the said offence. Following judgments in support of the submissions also filed by Ld. Counsel for the accused. Same are also gone through.

- (i) Leena Kataria v. State & Anr. [2020 II AD (DELHI) 259, CRL. A. 131/2018 decided on 16.01.20].
- (ii) Satish Kumar v. State NCT of Delhi & Anr.[2013 (138) DRJ 93 , CRL.L.P 95/2006 , decided on 01.08.2013].
- (iii) Ashok Baugh v. Kamal Baugh & Anr. [2015 X AD (DELHI) 372, CRL.L.P 358/2012 , decided on 06.10.2015].
- (iv) Rangappa v. Sri Mohan [2010 V AD (S.C) 565 , CRIMINAL APPEAL No. 1020 of 2010, decided on 07.05.2010].

12. Submissions heard. Record perused.

13. Findings:

On the basis of the arguments addressed by the Counsels for the parties and the evidence led before this Court (oral as well as documentary), the findings of this court are as under:

14. As per affidavit Ex.CW-1/A1 tendered on 16.09.2013 at post summoning stage and after framing of notice U/s 251 Cr.P.C, it is the case of the Complainant that the complainant and the accused were well known to each other and in the month of March 2011, accused had approached to the complainant and asked for a friendly loan of Rs 50,000/- which was given in terms of cheque bearing no. 722662 dated 22.03.2011 drawn on United Bank of India Branch, Gagan Cinema , Nand Nagri, Delhi and same was recorded in written by executing an agreement dated 22.03.2011. Further in the month of April 2011, accused once again approached the complainant and asked for another friendship loan of Rs 95,000/- which was also given by the complainant and same was recorded in written by executing an agreement dated 15.04.2011 for Rs 1,45,000/-. Thus for discharge of the liability and to repay the said amount, the accused issued a cheque for Rs 1,45,000/- vide cheque no. 361931 dated 20.12.2011 drawn on HDFC Bank Ltd. , Yamuna Vihar, New Delhi with the assurance that the said cheque will be encashed on its presentation.

Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 9/23 However, when the complainant presented the said cheque for encashment through his banker, the same was returned unpaid/dishonoured by the banker of the accused with remarks "Account Closed" vide cheque returning memo dated 13.03.2012. The said information was received by the Complainant on 16.03.2012 from his banker. The complainant then contacted the accused to make the payment of the cheque in question but the accused paid no heed to the said request and therefore the complainant got issued a legal demand notice dated 26.03.2012 upon the accused through his counsel but the accused neither replied the same nor paid the cheque amount to the complainant within the time fixed and hence the present Complaint U/s 138 N.I Act has been filed by the Complainant against the accused in the said background.

15. At this stage for reference, Section 138 NI Act may be reproduced as under:-

138. Dishonour of cheque for insufficiency etc. of funds in the account.-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years] or with fine which may extend to twice the amount of the cheque or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of cheque [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

and Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 10/23

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be , to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation- For the purposes of this section "debt or other liability" means a legally enforceable debt or other liability.

Section 142 N.I Act 1881 may also be reproduced as under:-

142. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)- (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138."

16. The object underlying Section 138 of the Negotiable Instruments Act is to promote and inculcate faith in the efficacy of banking system and its operations giving credibility to Negotiable Instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument.

Following acts constitute an offence under section 138:-

- (i) Drawing of the cheque ;
- (ii) Presentation of the cheque to Bank,
- (iii) Returning the cheque unpaid by the drawee Bank,
- (iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and,

Case No. 158/16

Anil Kumar Singh Vs. Mohd. Shahid

- (v) Failure of the drawer to make payment within 15 days of the receipt of the notice.

17. In the case of "O.P. Chirania vs Dir. Of Lotteries And Deputy ... on 12 March, 1998"¹, the Hon'ble Delhi High Court observed in para no. 9 as under:-

9. It is to be noticed that the mere issuance of a cheque is not an offence. The offence is committed and cause of action under section 138 read with section 142 arises when in spite of the demand notice by the payee issued within fifteen days of the receipt of the intimation by him from the bank regarding Dishonor of the cheque on account of the reason of insufficiency of funds in the account of the drawer, payment is not made by the drawer to the payee within the period stipulated in section 138(c), i.e, within a period of fifteen days of the receipt of the said notice by the drawer. From the expiry of these fifteen days complaint is to be made within one month. In other words, section 138 of the Act provides an opportunity to the drawer of a Dishonored cheque to pay within fifteen days of the receipt of a written notice sent by or on behalf of the drawee/ payee informing him that the cheques had been Dishonored. If payment is still not made by the drawer to the drawee within fifteen days of the receipt of the notice he commits an offence giving rise to a cause of action to the drawee to file a complaint before the court of a Metropolitan Magistrate within thirty days thereafter.

18. In the present case, in brief it is the case of the complainant that complainant and accused were well known to each other for the last few years and having cordial relations with each other. In the month of March 2011, accused approached the complainant and asked for a loan of Rs 50,000/- which was provided to him by the complainant vide cheque bearing no. 722662 dated 22.03.2011 drawn on United Bank of India Branch, Gagan Cinema, Nand Nagri, Delhi and same was recorded

in written by executing an agreement dated 22.03.2011. Thereafter again in the month of April 2011, accused approached 1 Equivalent citations: 1998 IVAD Delhi 197, 1998 (46) DRJ 537.

Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 12/23 the complainant and asked for another friendly loan of Rs 95,000/- which was also given by the complainant and same was also recorded in written by executing an agreement dated 15.04.2011 for Rs 1,45,000/-. To discharge this liability and to repay the said amount , the accused issued a cheque bearing no. 361931 dated 1,45,000/- dated 20.12.2011 drawn on HDFC Bank Ltd, Yamuna Vihar Branch, New Delhi. However the said cheque when presented for encashment by the complainant through his bank, the same was returned unpaid/dishonoured with remarks "Account Closed" vide cheque returning memo dated 13.03.12. Thereafter legal demand notice dated 26.03.12 was issued on behalf of the complainant apprising the accused about the dishonor of the cheque and calling upon the accused to make the payment of Rs 1,45,000/- covered by the cheque in question. But the accused failed to make the payment and hence the present case against the accused filed by the complainant before this Court.

19. To prove these facts the complainant has got examined two witnesses. CW-1 (Anil Kumar Singh) complainant himself who tendered his evidence by way of affidavit which is Ex.CW-1/A1 on court record. The said affidavit was tendered on 16.09.2013. In the said affidavit the complainant has reiterated all the facts on oath before the Court. In his cross examination CW-1 stated that he is engaged in the business of transportation and he had one commercial vehicle (Mahindra Champion) . He stated that he gave a sum of Rs 50,000/- as loan to the accused person on 22.03.2011. At the time of giving loan of Rs 50,000/- to the accused person, he executed an agreement dated 22.03.2011 which is Ex.CW-1/5. He denied the suggestion that the accused person repaid a sum of Rs 70,000/- to him i.e. principal amount as well as interest. CW-1 categorically stated in his cross examination that the accused Mohd. Shahid again took a sum of Rs 95,000/- as loan from him on 15.04.2011. In his cross examination CW-1 further stated that the accused Mohd. Shahid was facing a financial crisis and he requested him for the loan of Rs 95,000/- to run his factory. Hence under these circumstances, the complainant again provided him the said loan. An agreement for the loan of Rs 95,000/- was executed between him and accused Mohd. Shahid on 15.04.2011. He stated that he gave the loan of Rs 95,000/- by cash to accused Mohd. Shahid. The said agreement was executed on the stamp paper of Rs 50/-. The stamp paper was purchased in the name of Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 13/23 accused Mohd. Shahid and himself. He stated that the stamp paper was purchased from Sunder Nagri. CW-1 specifically denied the suggestion that accused Mohd. Shahid had not taken any loan of Rs 95,000/- from him on 15.04.2011. He further denied the suggestion that the agreement dated 15.04.2011 which is also Ex.CW-1/5 is a forged document. CW-1 further denied the suggestion that the name and amount of Rs 1,45,000/- in the cheque in question had not been filled up by the accused Mohd. Shahid in Ex. CW-1/1. He denied that the cheque in question Ex.CW-1/1 was taken in blank as security at the time of taking the loan of Rs 50,000/- on 22.03.2011. He stated that it is correct that in para no. 3 of his legal notice the loan amount is mentioned as Rs 75,000/-. He stated that his evidence by way of affidavit was prepared by his counsel at his instructions. The complaint case was also drafted by his counsel at his instructions. He stated that he is income tax payee for last about 3-4 years. In his further cross examination conducted on 02.07.2015, CW-1 stated that he did not know if the factum of loan of Rs 50,000/- had been shown in his income tax return or not. Further to prove these facts CW-1 relied

on documents Ex. CW-1/1 to Ex. CW-1/5. Ex. CW-1/1 is the original cheque bearing no. 361931 dated 20.12.2011 drawn in favour of the complainant (Anil Kumar Singh) for a sum of Rs 1,45,000/-. The said cheque bears the signatures of the accused Mohd. Shahid at the bottom. Ex. CW-1/2 is the cheque return memo dated 13.03.2012 which shows that cheque bearing no. 361931 was returned unpaid due to "Account Closed". Ex. CW-1/3 is the legal demand notice dated 26.03.2012 issued on behalf of the complainant to accused Mohd. Shahid thereby informing about the cheque in question and calling upon the accused Mohd. Shahid to pay Rs 1,45,000/- to the complainant covered by the cheque in question. Ex. CW-1/4 is the original postal receipt dated 26.03.2012 for the issuance of the said legal notice to the accused Mohd. Shahid. Ex. CW-1/5 (Colly) are the two written agreements dated 22.03.2011 for loan transaction of Rs 50,000/- between the complainant and the accused Mohd. Shahid and written agreement dated 15.04.2011 for loan transaction of Rs 95,000/- between the parties. It may be noted that the accused has admitted the first agreement dated 22.03.2011 but denied the later agreement dated 15.04.2011 for loan amount of Rs 95,000/- in his defence and submitted that agreement dated 15.04.2011 is a forged agreement and it does not bear his signatures.

Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 14/23

20. Another witness examined on behalf of the complainant to support his case is CW-2 Pushkar Raj who stated in his examination in chief on 04.10.2018 that on 22.03.2011 complainant had given Rs 50,000/- by way of cheque bearing no. 722662 drawn on United Bank of India Branch, Nand Nagri, Gagan Cinema, Delhi in his presence to accused Mohd. Shahid and in this regard an agreement was also executed and the same also bears his signatures as a witness. The same is already exhibited as Ex.CW-1/5 (Colly) bearing his signatures at point X and thereafter on 15.04.2011, the complainant had given Rs 95,000/- in cash to the accused in his presence and in this regard agreement was also executed. Same is already exhibited as Ex.CW-1/5 (Colly) bearing his signatures at point Y. In his cross examination CW-2 stated that he was running the business of photocopy, lamination and typing from his shop. He knows the complainant (Anil Kumar Singh) because he is old known to him and he was also known to his father. He stated that the agreement dated 22.03.2011 was got typed by complainant (Anil Kumar Singh) in his presence. Again said the accused Mohd. Shahid was also present. The complainant (Anil Kumar Singh) brought the stamp paper on which agreement was drafted with him. he reiterated that the agreement dated Ex.CW-1/5 (Colly) dated 22.03.2011 bears his signature at point X. CW-2 further stated that he read out the said agreement before he signed it. He further stated that the agreement was signed in his presence. CW-2 stated that he did not know when this agreement dated 22.03.2011 was got notary attested. He stated that he did not appear before Notary public for the attestation of the said agreement. CW-2 specifically denied the suggestion that the agreement dated 22.03.2011 is a forged and fabricated document which was prepared in the absence of the accused. In his further cross examination on 23.05.2019, CW-2 stated that he signed only one agreement. He stated that he did not remember the date of agreement. Again said he signed two agreements in the year 2011. The agreements were executed /drafted on different dates. He stated that he did not remember the date of agreements. He specifically stated that agreement dated 15.04.2011 bears his signatures at point Y which is already exhibited as Ex.CW-1/5. The agreement was typed in his shop. The agreement was typed in the presence of Anil Kumar Singh (Complainant) and Mohd. Shahid (Accused). He stated that the stamp paper was

purchased by Anil Kumar Singh. He stated that he was also present at the time when the agreement was typed. He stated that he had Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 15/23 read over the contents of the agreement before he signed it. CW-2 specifically denied the suggestion that the accused had not signed at point A in Ex.CW-1/5 or that the signatures of accused had been forged. He denied the suggestion that agreement dated 15.04.2011 is a forged and fabricated document and it was never executed between the complainant and the accused Mohd. Shahid. He stated that the agreement dated 15.04.2011 was not got attested by notary in his presence. He stated that he did not know as to where the agreement dated 15.04.2011 was got attested by notary. He stated that he did not know whether accused Mohd. Shahid had returned the sum of Rs 50,000/- alongwith interest to the complainant or not. No other material fact was deposed to by CW-2.

21. On the other hand it is the case of the accused as stated in his statement of defence made at the time of framing of notice U/s 251 Cr.P.C against the accused on 27.05.2013 that on 22.03.2011, he had taken a loan of Rs 50,000/- on the interest @ 10 % p.m from the complainant who is a professional money lender. A loan agreement was also executed between him and the complainant and a blank cheque which is in dispute in the present case was taken by the complainant as security. The accused stated that he paid the entire loan amount along with agreed rate of interest to the complainant but despite his repeated requests the complainant did not return his blank cheque in question which the complainant had taken as security from him at the time of taking the loan amount. The complainant also did not destroy the loan agreement which was executed on 22.03.2011 between him and the complainant. The accused stated that he had not taken any loan amount of Rs 95,000/- from the complainant on 15.04.2011. The agreement dated 15.04.2011 is a forged agreement and it does not bear his signatures. In legal demand notice dated 26.03.2012 as well pre-summoning evidence by way of an affidavit the complainant has repeatedly stated that he had taken a loan of Rs 75,000/- from the complainant. Thus the complainant has filed a false case against him. Further in his statement under section 313 Cr.P.C the accused stated that the complainant had misused the blank cheque in question which was taken by him as security. He has no legal liability towards the complainant. As a matter of fact he took a loan of Rs 50,000/- @ 2 % p.m from the complainant. The complainant got executed the agreement dated 22.03.2011 alongwith one blank Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 16/23 signed cheque from him. He repaid the sum of Rs 70,000/- as principal amount and interest to the complainant. Despite his various requests the complainant did not return his blank signed cheque. The agreement dated 15.04.2011 is a forged agreement and it does not bear his signatures. He never took any amount of Rs 95,000/- from the complainant.

22. In the case of " Uttam Ram v. Devinder Singh Hudan & Anr." , decided on 17 October 2019 the Hon'ble Supreme Court of India pleased to observe that:-

A negotiable instrument including a cheque carries presumption of consideration in terms of Section 118(a) and under Section 139 of the Act. Sections 118(a) and 139 read as under:

"118. Presumptions 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, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;....

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."

23. There is the mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act. 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.

2CRIMINAL APPEAL NO. 1545 OF 2019 (ARISING OUT OF SLP (CRL) NO. 3452 OF 2019).

Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 17/23 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 non-existence 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 non-existence 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 to 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."

24. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial

transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof."

Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 18/23

25. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions 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 as held in Hiten P. Dalal [Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16 : 2001 SCC (Cri) 960] .

26. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

27. In the case of Rangappa v. Sri Mohan [2010 V AD (S.C) 565 , CRIMINAL APPEAL No. 1020 of 2010, decided on 07.05.2010], the Hon'ble Karnataka High Court pleased to observe specifically in relation to the nature of the presumption contemplated by section 139 of the Act that:-

45. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business , trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This however, shall not mean that the courts shall put a blind eye to the ground realities.

Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 19/23 Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have been rebutted. Other important principles of legal jurisprudence namely presumption of innocence as a human right and the doctrine of reverse burden introduced by section 139 should be delicately balanced. Such balancing acts indisputably would largely depend upon the factual matrix of each case, the materials

brought on record and having regard to legal principles governing the same.

28. Further in the case of "JaiPrakash Singh v. Rashmi Aggarwal" [2013 (6) LRC 345 (Del) decided on 11.07.2013], the Hon'ble High Court of Delhi pleased to observe that "Undeniably as per the settled legal position, to rebut the statutory presumptions arising in favour of the complainant under section 118 read with section 139 of the Negotiable Instruments Act, the accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial, yet the accused has to raise a probable defence and prove on record such facts and circumstances that are sufficient to rebut the presumptions having arisen in favour of the complainant in terms of section 118 read with section 139 of the Negotiable Instruments Act. The accused cannot succeed in rebutting the statutory presumptions as envisaged under section 118 read with section 139 of the Negotiable instruments Act by mere denials or by raising a weak defence or even by raising a strong defence but not proving the same through any reliable or cogent evidence."

29. Now coming to the facts of the present case. In the present case it is the defence of the accused that on 22.03.2011, he had taken a loan of Rs 50,000/- on the interest @ 10 pm from the complainant. A loan agreement was also executed between him and the complainant and a blank cheque which is in dispute in the present case was taken by the complainant as security. He paid the entire loan amount alongwith agreed rate of interest to the complainant but despite this the complainant did not return his blank cheque and also did not destroy the loan agreement dated 22.03.2011 between him and the complainant. He had not taken any loan amount of Rs 95,000/- from the complainant on 15.04.2011. The agreement dated 15.04.2011 is a forged agreement and it does not bears his signatures. In legal demand notice dated 26.03.2012 as well as pre summoning evidence, the complainant repeatedly Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 20/23 stated that the accused had taken a loan of Rs 75,000/- from the complainant. It clearly shows that the complainant has filed a false case against him.

30. In the considered opinion of this Court this defence of the accused does not seem to be probable in the facts and circumstances of the present case. The present case has been filed by the complainant for dishonour of cheque of Rs 1,45,000/- allegedly issued by the accused to the complainant to discharge his liability towards the complainant. Ex. CW-1/1 is the original cheque for an amount of Rs 1,45,000/- bearing signatures of the accused. The accused has not denied his signatures on the said cheque. Ex. CW-1/2 is the return memo dated 13.03.2012 which shows that the said cheque was returned due to the reason "Account Closed". Thereafter legal notice dated 26.03.2012 was issued on behalf of the complainant to the accused regarding the dishonour of the said cheque and demanded Rs 1,45,000/- covered by the said cheque. No doubt in the legal notice as well as in the original complaint, the complainant side mentioned two amounts one for Rs 50,000/- and another Rs 75,000/- , however, the total liability was stated to be of Rs 1,45,000/- . Further this may be due to typographical mistake as the legal notice as well as complaint were drafted by the Counsel for the complainant at his instructions. The Complainant cannot be punished for the mistake of his Counsel. Nevertheless in the post summoning evidence which is Ex. CW-1/A1 the complainant side corrected the said mistake and mentioned two amount i.e. Rs 50,000/- given by way of agreement dated 22.03.2011 and Rs 95,000/- given by way of agreement dated 15.04.2011 total amounting to Rs 1,45,000/-. Further no reply of the legal notice dated 26.03.2012 was given by

the accused side thereby raising the said point then and there only. Moreover, CW-1 has categorically stated in his cross examination that he gave a sum of Rs 50,000/- as loan to the accused on 22.03.2011 by way of agreement dated 22.03.2011 which is Ex.CW-1/5 and again the accused took a sum of Rs 95,000/- as loan from him on 15.04.2011 and for this purpose also an agreement for the loan of Rs 95,000/- was executed between him and the accused Mohd. Shahid on 15.04.2011. Further CW-2 Pushkar Raj stated in his examination that on 22.03.2011, the complainant gave Rs 50,000/- to the accused in his presence and in this regard an agreement was also executed and he signed the same as witness which is Ex.CW-1/5 (Colly) bearing his signatures at point X and thereafter on Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 21/23 15.04.2011 the complainant had given Rs 95,000/- in cash to the accused in his presence and in this regard also an agreement was executed which is Ex.CW- 1/5 (Colly) bearing his signatures at point Y. In his examination CW-2 specifically denied that the agreement dated 22.03.2011 is a forged and fabricated document which was prepared in absence of the accused. Further in his cross examination, CW-2 stated that agreement dated 15.04.2011 bears his signatures at point Y which is Ex.CW-1/5. The agreement was typed in his shop in the presence of the complainant and accused. He denied the suggestion that accused Mohd. Shahid had not signed at point A in Ex.CW-1/5 or that the signatures of the accused are forged and that the agreement dated 15.04.2011 is a forged and fabricated document.

31. Thus, in the facts and circumstances of the present case, the testimony of CW-1 (Anil Kumar Singh) and CW-2 (Pushkar Raj) seems to be clear, unequivocal and trustworthy and inspires the confidence of this Court. Accused has merely denied that the later document dated 15.04.2011 Ex. CW-1/5 (Colly) does not bear his signatures but the testimony of CW-2 reveals that the document was signed by the accused at point A and the witness Pushkar Raj has also identified his signatures on the said document at point Y. Consequently, the evidence placed on record by the complainant shows that the accused had taken Rs 50,000/- from the complainant vide agreement dated 22.03.2011 and Rs 95,000/- vide agreement dated 15.04.2011 in the presence of CW-2 Pushkar Raj who had signed as attesting witness on both the agreements at point X and point Y. The cheque in question was issued on account of that liability and the cheque was dishonoured on presentation vide return memo dated 13.03.2012 due to "Account Closed" and despite issuance of legal notice dated 26.03.2012, the accused failed to pay the amount of Rs 1,45,000/- to the complainant. No evidence has been placed on record by the accused to disprove the case of the complainant or to prove repayment/returning the loan amount to prove his defence in the present case. .It may be noted that the statement of accused under Section 313 is not a substantive evidence of defence of the accused but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case of accused. Once the cheque is proved to be issued it carries statutory presumption of consideration. Then the onus is on the respondent to disprove the presumption. Cross examination of the prosecution Case No. 158/16 Anil Kumar Singh Vs. Mohd. Shahid 22/23 witness is not sufficient to rebut the presumption of consideration as observed by the Hon'ble Supreme Court of India in the above noted cases. Thus the facts and circumstances of the case suggests that the parties were well known to each other and had monetary transactions and that the complainant had advanced a loan of Rs 50,000/- and 95,000/- to the accused Mohd. Shahid . The cheque in question was issued for discharge of debt and liability towards the complainant.

32. Accordingly, after appreciation of evidence oral as well as documentary led by the complainant , this court is of the view that the complainant has been able to prove his case against the accused on the basis of presumptions raised U/s 118 NI Act and 139 NI Act as well as testimony of CW-2 and documentary evidence Ex. CW-1/1 to Ex. CW-1/5 and the accused has failed to rebut the presumptions raised in favour of the complainant U/s 118 and 139 NI Act as no positive evidence has been placed on record by the accused in his defence despite opportunity given by the Court. Further in the humble opinion of this Court the judgment relied upon by the accused side are of no help as they operate in different facts and circumstances. Hence, in the considered opinion of this Court, the ingredients of section 138 NI Act are fulfilled. The complaint has been filed within the period of limitation and the accused is held guilty of the commission of the offence U/s 138 NI Act and is convicted accordingly.

Judgment pronounced in the open Court.

Put up for order on sentence on 04.03.2021 at 2:00 PM

Dictated & Announced in Open Court

FAHAD

FAHAD UDDIN

Dated 20.02.2021

District, Karkardooma

UDDIN

Courts, Delhi
Date: 2021.02.20
04:33:14 +0530

(Fahad Uddin)
MM-04/SHD/Karkardooma Courts

Case No. 158/16

Anil Kumar Singh Vs. Mohd. Shahid

23/23