

Rangappa vs Sri Mohan (2010) 11 Scc 441 And Also In ... on 9 May, 2023

IN THE COURT OF MS. PADMA LANDOL,
METROPOLITAN MAGISTRATE, NI ACT DIGITAL COURT- 03, NEW
DELHI DISTRICT, PATIALA HOUSE COURT, NEW DELHI

RAMESH KUMAR v. VINOD KUMAR

1. Complaint Case no.	: 3171/2022
2. Date of Institution of case	: 22.03.2022 (As per Layers Software)
3. Name of the complainant	: Ramesh Kumar, s/o Sh. S.P Singh, R/o Plot No. 3, Khasra No. 430-431 Gali No. 2, Kailash Puri, New Delhi-110045
4. Name and address of Accused	: Vinod Kumar R/o Quarter No. 1A/B3, 99 Quarter, NDMC Housing Complex, New Delhi-110021
5. Offence complained of	: Section 138 NI Act
6. Plea of accused	: Pleaded not guilty
7. Final Order	: Convicted
8. Date of judgment	: 09.05.2023

-:JUDGMENT :-

1. This judgment shall decide and dispose off Criminal Complaint Case No.3171/2022; titled as Ramesh Kumar v. Vinod Kumar; instituted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter NI Act) for the dishonour of one cheque for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only).

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2. It is the case of the complainant that he is sharing friendly relationship with t accused since the last many years. In February 2021, accused approached the complainant for a friendly loan of Rs. 2,00,000/-. Accordingly, the complainant extended the loan to accused on 20.02.2021. Accused issued a post dated cheque bearing no. 983929 dated 20.01.2022 for a sum of Rs. 2,00,000/- (cheque in dispute at Ex. CW-1/B) in discharge of the friendly loan. The parties accordingly executed a

loan agreement dated 03.03.2021 [Ex. CW-1/A]. As per the instructions of the accused, complainant presented the cheque in dispute, however, it came to be dishonoured with remark "Funds Insufficient" vide a return memorandum dated 25.01.2022 [Ex. CW-1/C]. The complainant eventually sent a legal demand notice dated 02.02.2022 [Ex. CW-1/D] to the accused through postal receipts [Ex. CW-1/E]. Despite service of the notice as shown by internet generated tracking report [Ex. CW-1/F], no payment was received by the complainant. The accused having failed to make the payment within the statutory period of 15 days, the present complaint has been filed by the complainant against the accused.

3. The complainant was directed to submit the original case documents (complaint, affidavit of pre-summoning evidence, cheque and annexed documents) with the Court, a condition precedent to the taking of cognizance of the complaint, as per SOP/Guidelines issued by the SCMSC Hon'ble High Court of Delhi for functioning of Digital Courts. Pursuant to the said compliance, vide order dated 08.04.2022, after being satisfied that prima facie ingredients of Section 138 NI Act are made out cognizance was taken and summons were directed to be issued against the accused. Accused entered into appearance on 16.07.2022 and was admitted to bail on the same date. Upon seeing a possibility of settlement, matter was referred to mediation, however, no settlement could be arrived at. Thereafter, notice under Section 251 Cr.PC was framed and served upon the accused to which he pleaded not guilty and claimed trial.

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4. The accused then expressed their willingness to move an application under Sec. 145(2) NI Act. Upon the submission of the Ld. Counsel for complainant that he has no objection to the said application and also considering the facts of the case and defence taken by accused, the oral application stood allowed. The matter was then listed for recording of evidence through video conference through Cisco Webex Meet in compliance of the Project Implementation Guidelines 2020 laid down by Hon'ble High Court of Delhi and Video Conferencing Rules 2021 issued by Hon'ble High Court of Delhi dated 26.10.2021. Complainant was examined and cross-examined as CW-1. He tendered his affidavit in post summoning evidence (as the solitary witness) and relied upon following documents:

- i) Loan Agreement dated 03.03.2021: Ex. CW-1/A.
- ii) Original cheque in dispute dated 20.01.2022: Ex. CW-1/B.
- iii) Bank Return memo dated 25.01.2022: Ex. CW-1/C.
- iv) Legal Demand Notice dated 02.02.2022: Ex. CW-1/D.
- v) Postal receipts dated 04.02.2022: Ex. CW-1/E.
- vi) Internet generated tracking report: Ex. CW-1/F.
- vii) Certificate u/s. 65-B Indian Evidence Act: Ex. CW-1/G.

5. After the conclusion of complainant evidence, accused was examined under Section 313 Cr.PC wherein all the incriminating evidence were put to him. Accused then moved an application u/s. 315 CrPC which was allowed. Thereafter, accused was examined and cross-examined as DW-1. DW-1 has relied on the following documents:

- i) Copy of bank passbook of Ms. Meena, wife of accused: Ex. DW-1/1(OSR).
- ii) Screenshot of payment of Rs. 10,400/- and Rs. 16,000/-: Mark X (colly).
- iii) Certificate u/s. 65B of Indian Evidence Act: Ex. DW-1/2.

Accused then closed his defence evidence.

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6. Final arguments have been heard at length. Complete record including the written submissions filed by both sides have been perused carefully.

7. The Court shall now deal with the defence taken by the accused and contentions of both the parties.

DEFENCE OF ACCUSED:

8. The accused denied taking any friendly loan from the complainant. He stated that his wife had taken a loan of Rs.1,14,900/- from the complainant and he had given the cheque in dispute as security to the complainant. He further stated that he already returned Rs. 58,500/- to the complainant through online transfer and he has the relevant slips with him. That the complainant has filled a wrong amount in the cheque in dispute and has misused the cheque in dispute. In the notice u/s. 251 Cr.PC, accused admitted his signature on the cheque in dispute. Accused further admitted the receipt of legal demand notice. In his statement u/s. 313 Cr.PC, accused stated that the complainant had transferred Rs. 1,14,900/- in the bank account of his wife and complainant had even taken his signature on a blank paper. He further stated that the complainant gives loans to one party and blackmails a second party by presenting his security cheque. That complainant is even threatening him of dire consequences.

9. In the final arguments, complainant has asserted its case for conviction against the accused essentially on the ground of having proved the cause of action against him, beyond all reasonable doubt. This is premised on the substantive proof of presentation of the cheque in dispute admittedly issued by the accused with his signature, its return as dishonoured from the payee's bank upon presentation for encashment and non-payment by the accused of the legally enforceable debts within the statutorily prescribed period, despite service of legal demand notice. It is submitted by the Ld. Counsel for the complainant:

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i) That the accused failed to prove the bank statement [Ex. DW-1/1] and screenshots of payment [Mark X (colly)]. Further, there is no connection of these documents with the complainant.

ii) That the accused has failed to give any explanation regarding the circumstances under which the cheque in dispute was issued by him or misused by the complainant.

iii) That the accused has admitted receiving of legal demand notice, even then failed to make any payment. Further, the signature on the cheque in dispute is also admitted, hence, the presumption u/s. 139 NI Act is in the favour of complainant.

Ld. Counsel has placed reliance on the following judgments in support of his arguments:

a) Kalamani Tex and Ors. v. P. Balasubramanian (2021) 5 SCC 283

b) Bir Singh v. Mukesh 2019 (4) SCC 197.

10. Per contra, Ld. Counsel for the accused has prayed for dismissal of the complaint and acquittal of the accused on several counts:

i) That the accused did not take any friendly loan from the complainant. That wife of the accused had taken a loan of Rs. 1,14,900/- from the complainant and the accused had given the cheque in dispute by way of security. That the accused has already returned a sum of Rs. 58,600/- to the complainant. That Rs. 26,400/- was paid through online mode and Rs. 32,200/- by way of cash.

ii) That the complainant had taken signatures of the accused on blank stamp papers and blank papers and same have been misused by the complainant by converting it as loan agreement dated 03.03.2021. Further, loan agreement was executed pursuant to advancement of loan on 20.02.2021 which falsifies the case of the complainant.

iii) That there is neither any witness to the loan agreement in question nor complainant has filed any bank statement/documentary proof to show the advancement of loan in question, hence, the case of the complainant is unbelievable.

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iv) That the defence of the accused has been consistent throughout and nothing adverse has come out from the cross-examination of the accused.

11. It is now pertinent to examine the factual matrix of the case in the light of the ingredients of the provision as produced herein:

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 the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(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 PADMA LANDOL LANDOL Date:

2023.05.09 17:34:13 +0530 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.

12. The essential ingredients in order to attract Sec. 138 of NI Act, 1881 are:

i) Existence of legally enforceable debt or liability and issuance of cheque in discharge of said debt or liability;

(ii) Dishonor of cheque in dispute which must have been drawn on an account maintained by the accused;

(iii) Service of legal demand notice seeking payment of cheque amount within 30 days from the date of receipt of return memo;

(iv) Non-payment of cheque amount within fifteen days from the date of service of notice; and

(v) Filing of complaint within one month from the date on which cause of action arises.

13. Now, coming to the facts of the case in hand in the light of above mentioned legal principles. In the instant case, the issuance of the cheque in dispute [Ex. CW- 1/B] by the accused, its presentation in the bank for encashment and subsequent dishonour due to the reason "funds insufficient", is not disputed and is a matter of record, as proved by the return memo [Ex. CW-1/C]. It is also established that the cheque in dispute belongs to the accused and even the signature on the same is admittedly of the accused. Once these facts are established, a presumption of the cheque having been issued in discharge of a legally existing liability and drawn for good consideration arises by virtue of Section 118 (a) of the Negotiable Instruments Act. Once Section 139 of the NI Act comes into picture, the Court presumes that the cheque was issued in discharge, in whole or in part, of any debt or liability. At this stage, with the help of presumption under Section 139 of the Negotiable Instruments Act, the case of the complainant stands proved.

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14. Since the presumption under Section 139 read with Section 118(a) of the NI Act is in favour of the complainant, it is now for the accused to rebut the same either by discrediting the veracity of material relied upon by the complainant or by leading positive evidence to probabalise his defence on the touchstone of preponderance of probabilities as provided by the three Judge bench of the Hon'ble Supreme Court in Rangappa Vs Sri Mohan (2010) 11 SCC 441 and also in Rohitbhai Jivanlal Patel v. State of Gujarat & Anr. (2019) 18 SCC 106.

15. It is trite law that for rebuttal of the said presumption under Section 139 read with Section 118(a) of NI Act, accused need not even step into the witness box as he can rebut the same by placing reliance on the material brought on record by the complainant or even by raising presumptions of fact and law on the basis of material available on record. The accused has to make out a fairly plausible defence which is acceptable to the Court. Therefore, the standard of proof required from the accused to prove his defence is "preponderance of probabilities" and not beyond reasonable doubts. However, at the same time, it is also to be remembered that bare denial of the existence of legally enforceable debt or other liability cannot be said to be sufficient to rebut the presumption and something which is probable has to be brought on record to shift the burden back to the complainant.

The statutory presumption u/s. 118(a) NI Act reads 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 The statutory presumption u/s. 139 NI Act reads as under:

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39. 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.

16. Keeping these basic principles in mind, this Court shall now proceed to deal with the various defences taken by the accused and examine whether the accused has been able to rebut the presumption arising in favour of the complainant:

I. Defence of non-existence of any liability:

The first and foremost defence taken by the accused is that he did not take any loan from the complainant. Instead, wife of the accused had taken a loan of Rs. 1,14,900/- from the complainant which he transferred in the bank account of his wife on 02.03.2021 in two tranche of Rs. 90,000/- and Rs. 24,900/-. Against the said loan, accused had given the cheque in dispute to the complainant by way of security.

Further defence taken by the accused is that he had already returned Rs. 58,500/- to the complainant against the said loan. These defences are inter-linked, however, same shall be discussed herein in seriatim:

i) In support of the defence that complainant had transferred Rs. 1,14,900/- in the bank account of the wife of the accused, accused has filed bank statement of his wife [Ex. DW-1/1(OSR)]. Ld. Counsel for the complainant has contended that the two entries reflecting in the bank statement [Ex. DW-1/1(OSR)] neither pertains to the complainant nor shows the transaction between the parties herein. Close perusal of the bank statement on record and specially the two entries dated 02.03.2021 for Rs.

90,000/- and Rs. 24,900/- reflects that IMPS transfer of the said amounts were made from the account no. ending with digits 1068 and mobile no. 9310530766 and the name of the transferor is not reflecting therein. However, accused has failed to show that the account no. ending with digits 1068 and the mobile no. 9310530766 belongs to the complainant. Since admittedly parties maintain a long standing relationship, PADMA Date:

LANDOL 2023.05.09 17:34:36 +0530 accused could have easily produced the phone number of complainant at the relevant time, however, he has failed to take any steps in this regard. These are merely two entries of IMPS transfers from which one cannot conclude or atleast have a doubt that the amounts reflecting therein could have been

transferred by the complainant. It was incumbent upon the accused to draw a link between the complainant and the two entries in the bank statement showing transfer of amounts, may be by producing supporting documents or calling a material witness, however, when no such link has been drawn, not even remotely, this Court is bereft of any reason why this defence of the accused shall be accepted. Accused has also failed to establish any instance in the entire transaction of taking of loan by his wife from the complainant. He could have proved the conversations/other instances which must have been transpired from the loan transaction, however, nothing in this regard has come on record. Hence, the defence that complainant advanced loan or transferred Rs. 1,14,900/- in the bank account of wife of accused is devoid of merits and is liable to be dismissed.

ii) It is further asserted by the accused that the cheque in dispute was given to complainant as a security against the loan given by complainant to his wife and the same has been misused by the complainant. Same is only a bald averment not supported by any evidence, whatsoever. As already discussed, when accused has failed to establish the loan advanced by complainant to accused, there is no occasion for issuing the cheque in dispute by way of security. Even otherwise, Sec. 138 NI Act uses the term 'any debt or liability' i.e. cheque issued to person A by person B on behalf of the debt or liability of person C is perfectly acceptable and if such a cheque is dishonoured, it attracts the offence u/s. 138 NI Act against person B. On this count also, the defence of the accused fails. Consequently, the defence that cheque in dispute was given by way of security against the loan of his wife and there was no loan taken by accused himself is per se devoid of merits specially in the absence of any contrary evidence on record. Moreover, the law on security cheques is settled. It
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LANDOL 2023.05.09 17:34:42 +0530 has been held by the Hon'ble Supreme Court of India in Sripati Singh v. State of Jharkhand and Anr. 2021 SCC OnLine SC 1002 wherein it has been held that:

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

Further, the Hon'ble High Court of Delhi in *Credential Leasing & Credits Ltd. Vs. Shruti Investments* 2015 SCC OnLine Del 10061 has held that even a security cheque can form the basis of complaint under Section 138 of the NI Act, if on the date of the deposit of the post-dated security cheque, the debt of the accused stood crystallized.

In the present case, accused has failed to show that there was no outstanding liability against him on the date of presentation of the cheque in dispute or there was any kind of understanding or agreement between the parties whereby payment of outstanding liability was deferred, hence, the complainant was within his rights to present the cheque in dispute and consequently file the present complaint. In view of PADMA LANDOL Date:

LANDOL 2023.05.09 17:34:49 +0530 the same, there is no gainsaying that this defence is also liable to be dismissed being devoid of merits.

iii) Accused has further taken a defence that pursuant to transfer of Rs. 1,14,900/- by complainant to his wife, accused had returned Rs. 58,500/- to the complainant against the said loan. In this regard, accused has produced a copy of screenshot of payment of Rs. 10,400/- and Rs.16,000/- [Mark X (colly)]. It is stated that Rs. 10,400/- was transferred to complainant from the bank account of the wife of the accused. Perusal of the screenshot showing transfer of Rs. 10,400/- reflects that the said amount is transferred to one 'Yadav Finance'. However, the name of sender/transferor as well as that of complainant and also the date of such transfer is nowhere reflecting. Accused has nowhere explained the relation between Yadav Finance and the complainant.

Upon raising a query in this regard by the court on the date of final arguments, accused orally submitted that Yadav Finance belongs to the complainant. However, accused has not produced any evidence, whatsoever, to prove the link between Yadav Finance and the complainant. Further, there are no grounds to even assume that Yadav Finance belongs to complainant or that complainant had asked the wife of the accused to transfer the said amount in the account of Yadav Finance. Accused has also not even examined his wife who could be a material witness in this regard. Hence, this defence of accused is also liable to be dismissed being vague and having no relation with any of the party in the present case. Even otherwise, the copy of screenshot of Rs. 10,400/- being an electronic document is not supported with mandatory certificate u/s. 65-B Indian Evidence Act, 1872. It is trite law that any electronic record/document when not supported by mandatory certificate u/s. 65-B Indian Evidence Act, 1872 cannot be read in evidence. Reliance in this regard is placed on the judgment in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* [2020 SCC OnLine SC 571]. Hence, the copy screenshot of Rs. 10,400/- cannot be made admissible in evidence.

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Accused has also filed a copy of screenshot showing transfer of Rs. 16,000/- to the complainant. It is stated that the said amount has been transferred by a third person, namely Gaurav Mishra at the instance of accused. Ld. Counsel for complainant has suggested during the cross-examination of accused that the said screenshot is a forged document. Perusal of the screenshot showing transfer of Rs. 16,000/- shows that transfer of the said sum is made to one Ramesh Kumar in his Punjab National Bank Account with account number XX7666 on 24 Jul, 02:04 PM. Accused could have examined Mr. Gaurav Mishra to prove the transfer of Rs. 16,000/- however, no initiative has been taken by accused in this regard. Further, accused has also not been able to show in any manner that the bank account number ending with XX7666 belongs to the complainant, hence it is not certain if the name 'Ramesh Kumar' on the screenshot is none other than the complainant himself. Further, close perusal of the said screenshot reflects that the same is in actual a photograph of a phone having the screenshot of payment receipt and the photograph is taken from a device namely 'Oppo A9 2020 on 2021/07/24 at 14:05' as reflecting therein. The certificate under Sec. 65-B of Indian Evidence Act, 1872 has been furnished by one Gaurav Mishra who has stated to have transferred the amount to Ramesh Kumar from his mobile phone. It was incumbent upon the owner of the device namely 'Oppo A9 2020' to also produce the mandatory certificate in terms of Sec. 65-B of Indian Evidence Act, 1872 so that the screenshot of transfer of Rs. 16,000/- is read in evidence, however, no such certificate has come on record. In absence of the same, the photograph showing the screenshot of transfer of Rs. 16,000/- cannot be read in evidence. Hence, accused has failed to establish that he transferred Rs. 16,000/- to complainant.

iv) Though accused has repeatedly stated that he returned Rs. 58,500/- to accused, however, he has failed to furnish any evidence, documentary or otherwise in this regard. Same has been admitted by accused during his cross-examination. Hence, the PADMA Date:

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v) It is trite law that a person cannot be insisted to lead a negative evidence, however, when the burden is on the accused to rebut the presumptions as under Sec. 139 and 118(a) of NI Act, he shall lead some cogent evidence or create a dent in the case of the complainant which is just sufficient to cause a doubt in the case of the complainant. In the instant case, accused has neither been able to show that there was a monetary transaction between the complainant and the wife of the accused nor that there was never a monetary transaction between the complainant and the accused or show any circumstance which would support his defence in any manner. Accused only attempted to establish this fact by filing a copy of bank passbook and payments receipts, however, as already discussed, these documents have not been able to create even a shadow of doubt in the case of the complainant.

II. Defence of loan agreement being forged and fabricated:

i) In his statement u/s. 313 Cr.PC, accused has stated that complainant had taken his signature on a blank paper. Same has been reiterated in his cross-examination. It is suggested by the Ld. Counsel for the complainant that when complainant had asked for repayment of the loan in question, accused executed the loan agreement dated 03.03.2021 [Ex. CW-1/A]. During the cross-examination of complainant, it has been suggested by the Ld. Counsel for accused that after taking signature of accused on a blank stamp paper, complainant prepared the loan agreement in question. During the cross-examination of accused, he admitted his signature as well as thumb impression on all the 3 pages of the agreement. He has also admitted the loan agreement to the extent of signature and thumb impressions in his statement u/s. 294 Cr.PC. The averment that the complainant made him sign on a blank paper is only a bald statement not corroborated by any evidence, whatsoever. Accused has also not shown existence of any circumstance under which fact of signing on a blank paper or PADMA LANDOL Date:

LANDOL 2023.05.09 17:35:08 +0530 subsequent preparation of loan agreement would seem probable. Further, accused is admittedly a Government employee and it is difficult to comprehend why a person who is supposed to know the consequences or risks involved in signing on a blank paper would nevertheless take such a risk. Accused has also not filed any police complaint regarding misuse/forgery of the blank signed paper. Going by the version of the accused, he signed the blank papers and thereafter did not do anything even after realising that the same has been misused by the complainant. Any reasonable person would take some steps when such an event occurs, however, accused chose not to take any steps. In view of the same, the defence that loan agreement [Ex. CW-1/A] is a forged document is also liable to be dismissed as devoid of merits.

III. Defence that cheque in dispute has been misused by the complainant by filling a wrong amount:

In his plea of defence while framing notice u/s.251 CrPC, accused has stated that complainant has misused the cheque in dispute by filling a wrong amount. Same has been reiterated by the Ld. Counsel for the accused in the form of a suggestion during the cross-examination of the complainant. This argument of the accused is again devoid of merits since it is trite law that once a signed cheque is handed over to a person, the authority to fill up the remaining particulars and use the cheque also stands transferred to the holder. In this context, the observations of Hon'ble High Court of Delhi in Hon'ble High Court of Delhi in Ramesh Goyal v. State & Anr. 2017 SCC OnLine Del 8887 to the effect that-

'there is no law that a person drawing the cheque must necessarily fill it up on his own hand writing and once the signatures on the cheque are admitted, the liability arising therefrom cannot be evaded on the specious plea that the contents were not filled up by the drawer of the cheque', bears relevance.

The Hon'ble Supreme Court in *Bir Singh v. Mukesh Kumar* (2019) 4 SCC 197 has also held that-

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"34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

Furthermore, Section 20 of the NI Act, 1881 also gives holder of a negotiable instrument authority to fill the same. Same reads as under:

Section 20: Inchoate stamped instruments:

Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount:

Provided that no person other than a holder in due course shall recover from the person delivering the instrument any thing in excess of the amount intended by him to be paid thereunder.

Hence, this defence of the accused is also liable to be dismissed.

IV. Attempt to pick holes in the case of complainant:

i) Ld. Counsel for accused has tried to pick holes in the case of the complainant by contending that the complainant has not filed his bank statement or brought any witness to prove the loan transaction in question. In the first blush, the objections may sound reasonable, however, in the present facts when the signature and thumb impressions on loan agreement in question [Ex. CW-1/A] is admitted by the accused and when there is not a whisper of suggestion as to absence of financial capacity of the complainant to advance the loan in question of Rs. 2 Lakhs, the objection does not appear to hold much weight. During the cross-examination, complainant has stated that he is engaged in a wholesale business of rice and his annual income is Rs.

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LANDOL 2023.05.09 17:35:22 +0530 9 Lakhs. There has been absolutely no contrary suggestion in this regard. Further, the loan in question is Rs. 2 Lakhs only and there is no reason to assume that the complainant did not have financial capacity to advance a loan of this amount.

Another instance which goes against the accused is that after receiving the legal demand notice [Ex. CW-1/D], he admittedly did not send any reply to the complainant. Non-sending of a reply per se is not fatal to the defence of the accused, however, in the present circumstance the accused is claiming that he had absolutely no transaction with the complainant, the loan agreement is forged and cheque in dispute has been misused by the complainant. In such a scenario, non-sending of a reply creates a doubt in the defence of the accused when the same is seen in conjunction with the failure of the accused to otherwise establish his defence.

17. It is a settled law that though the degree of burden on the accused to rebut the presumption is only to the extent of preponderance of probability, however, in order to cross this threshold accused has to take some steps which is more than mere averments, however, this has not been done in the present case. The Hon'ble Supreme Court in Rohitbhai Jivanlal Patel (supra) and in various other rulings have time and again, emphasized that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as envisaged under section 118 and 139 of the NI Act. In the case at hand, keeping all the aspects in view, the defence put forth by the accused and rebuttal of presumption raised against him is only a mere denial when tested on the touchstone of preponderance of probability. Further, it has been held in *Rajesh Agarwal v. State* 2010 SCC OnLine Del 2511 that:

"9.There is no presumption that even if an accused fails to bring out his defence, he is still to be considered innocent. If an accused has a defence against dishonour of the cheque in question, it is he alone who knows the defence and responsibility of spelling out this defence to the court and then proving this defence is on the accused....."

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18. In the light of the foregoing discussions, this court is of the firm opinion that the accused has not led any cogent evidence to rebut presumptions under Sec. 118 and 139 of NI Act. There is nothing coming out either in the cross examination of CW-1 or in Defence evidence which would probabalize the defence raised by the accused or falsify the case of the complainant, in fact as already discussed the defence of the accused is highly improbable and is not in the nature of compelling rebuttable evidence. In the above view, the complainant has proved that the accused had issued the cheques in dispute in his favour for discharge of the legally enforceable liability. This Court has no hesitation in

holding that in the facts and circumstances of the present case, the complainant has brought home his case proving the complicity of the accused in the offence under Sec. 138 Negotiable Instruments Act. Resultantly, the accused Vinod Kumar is thus, held guilty and stands convicted for the said offence.

Announced in Open Court today on 09.05.2023.

PADMA by PADMA LANDOL LANDOL Date: 2023.05.09 17:35:36 +0530 (PADMA LANDOL) MM (NI Act) Digital Court-03 New Delhi, PHC/Delhi/ 09.05.2023 Certified that this judgment contains 18 pages and each page bears my signatures.

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