

Digitally Signed vs Sri Mohan (2010) 11 Scc 441 And Also In ... on 20 February, 2023

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

MANJOT SINGH v. ANIL KUMAR SAINI

1. Complaint Case no.	: 2010/2021
2. Date of Institution of case	: 17.03.2021 (As per Layers Software)
3. Name of the complainant	: Sh. Manjot Singh S/o Late Sh. Satnam Singh, R/o B-60, Inder Puri, New Delhi-110012
4. Name and address of Accused	: Sh. Anil Kumar Saini S/o Sh. O.P Saini R/o B-20, Indepuri, New Delhi-110012
5. Offence complained of	: Section 138 NI Act
6. Plea of accused	: Pleaded not guilty
7. Final Order	: Convicted
8. Date of judgment	: 20.02.2023

-: JUDGMENT :-

1. The present complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as "NI Act") is filed by the complainant Manjot Singh. The background of the dispute as cited by the complainant is that the accused used to have friendly relations with the father of the complainant. In August 2020, accused

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approached the complainant for some loan for a period of 2 months. Accordingly, complainant transferred a sum of Rs. 4 Lakhs in the bank account of the accused on 28.08.2020. Accused handed over a post dated cheque (cheque in dispute-Ex. CW-1/2) of the same amount dated 30.10.2020 and assured that same would be duly encashed upon presentation. When the time to deposit cheque arrived, accused requested the complainant for some time stating that some payments are expected. Complainant agreed to the same. Thereafter, on 29.12.2020 accused called the

complainant's mother and requested for an urgent cash loan citing some bank emergency and that his bank account might get freezed if deposit is not made. On the next day, accused directed the complainant to deposit his cheque. However, upon presentment the cheque came to be dishonoured on 30.12.2020. Accused again sought for some more time and asked the complainant to present the cheque after 2 weeks.

2. At the assurance of the accused, complainant presented the cheque in dispute in his bank. Upon presentation, it came to be dishonoured with remark "Funds Insufficient" vide a return memorandum dated 28.01.2021 [Ex. CW-1/3]. The complainant eventually sent a legal demand notice dated 23.02.2021 [Ex. CW-1/4] to the accused through speed post vide postal receipts [Ex. CW-1/5] and internet generated tracking report [Ex. CW-1/6] and whatsapp screenshot [Ex. CW-1/8]. Despite service of the notice, 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

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14.01.2021, 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 15.01.2022 and was admitted to bail on the same date. Upon seeing the possibility of settlement, matter was referred to mediation, however, mediation failed and notice under Section 251 Cr.PC was framed on 12.07.2022 and served upon the accused to which he pleaded not guilty and claimed trial. Accused admitted the issuance of the cheque in dispute with his signature and also admitted the receipt of legal demand notice. In his defence, he stated that he had taken a loan of Rs. 4 lakhs from the complainant vide a loan agreement dated 29.12.2020. Complainant had taken 5 cheques (blank and only signed) from him by way of security. That the cheque in dispute is one of those 5 cheques. That the said loan was to be returned in one year and he has not returned the same.

4. The accused then expressed his wish to move an application under Sec. 145(2) NI Act. Upon considering the submission of the Ld. Counsel for complainant that there is no objection to the same and perusing the facts of the case, oral application was 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. On 22.09.2022, complainant, CW-1 was cross-examined and discharged.

5. In Complainant's evidence, the complainant (CW-1) tendered his affidavit in post summoning evidence and relied upon following documents:

- i) Photocopy of bank statement of complainant: CW-1/1.
- ii) Original cheque bearing no. 000261 dated 30.10.2020: CW-1/2.
- iii) Bank return memo dated 28.01.2021: Ex. CW-1/3.
- iv) Legal demand notice dated 23.02.2021: Ex. CW-1/4.

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- v) Speed Post Receipts: Ex. CW-1/5.
- vi) Internet generated tracking report: Ex. CW-1/6.
- vii) Returned Envelopes: Ex. CW-1/7.
- viii) Screenshot of whatsapp delivery: Ex. CW-1/8.

6. In his cross-examination, the Complainant (CW-1) deposed that his father used to give friendly loans to the accused. He stated that he did not give loan to the accused in his personal capacity before the loan transaction in question. He denied having any agreement at the time of advancement of loan in question. Witness admitted the existence of a consolidated loan agreement dated 29.12.2020 between his mother at one side and accused and his wife on the other side. Upon confrontation with the said loan agreement dated 29.12.2020 [Ex. CW-1/D1], complainant denied remembering the number of cheques received from accused at the time of execution of the said loan. Upon confrontation with para 5 of the said loan agreement [Ex. CW-1/D1], he answered that 5 cheques were not received from the accused and the actual number of cheques were lesser than 5. He admitted that he was present at the time of execution of the loan agreement, however, denied the suggestion that his mother had received 5 cheques from the accused and that the cheque in dispute is one of those cheques. He has further denied the suggestion that the cheque amount was part of the said loan agreement [Ex. CW-1/D1]. He has also denied the suggestion that out of the 5 cheques, two cheques were partly filled and three cheques were only signed. He has further deposed that he had been regularly following up with the accused right from the date of the cheque till its presentation and that he had informed the accused before presentation of the cheque in dispute. He denied giving any written notice to accused before presenting the cheque in dispute. Witness has denied the suggestion that he did not have possession of the cheque in dispute till 29.12.2020. Qua the loan agreement [Ex. CW-1/D1], he has admitted that loan therein was to be returned in one year. He denied the suggestion that accused had no liability as on the dates of dishonour of the cheque in dispute i.e. 30.12.2020 and 27.01.2021. Witness has further deposed that he

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did not give any written intimation to the accused regarding dishonour of cheque in dispute on 31.12.2020, however, he had orally informed the accused who then promised to maintain sufficient balance. He denied the suggestion that he did not intimate the accused since the cheque in dispute was premature in accordance with loan agreement [Ex. CW-1/D1]. Witness has stated that the cheque in dispute has nothing to do with the loan agreement [Ex. CW-1/D1]. That the said loan agreement was completely a different transaction. He admitted that he was the sole witness to the loan agreement. He has further admitted that in the said loan agreement [Ex. CW-1/D1], one cheque was issued by accused in his name. Complainant has denied the suggestion that the said cheque issued in his name in the loan agreement [Ex. CW-1/D1] was towards the security against the loan in question given by him to the accused. He has further denied the suggestion that the loan in question was part of the loan agreement [Ex. CW-1/D1] dated 29.12.2020. Thereafter, the complainant closed CE on the same date.

7. The accused was then examined under Section 313 Cr.PC wherein all the incriminating evidence was put to them. Accused has admitted the receiving of loan amount in question of Rs. 4,00,000/- on 28.08.2020 from complainant through bank transfers of Rs. 2,00,000/- each. He has stated that he entered into a loan agreement with the complainant and his mother on 29.12.2020 vide which they had agreed to advance a loan of Rs. 15 lakhs to 20 lakhs to him. He had given 5 cheques (blank and only signed) to the complainant and the cheque in dispute is one of those cheques. That the complainant transferred only Rs. 4 Lakhs to him and failed to advance further loan. Accused has further stated that it is mentioned in the loan agreement [Ex. CW-1/D1] that the loan in question of Rs. 4 Lakhs shall be included therein. That the said loan agreement was for a period of one year, however, on the next date itself i.e. 30.12.2020 the complainant presented the cheque in dispute in his bank.

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8. The accused was then examined as DW-1. In his examination-in-chief, DW-1 has reiterated his defence and deposed that in December 2020, a consolidated agreement [Ex. CW-1/D1] was executed for a loan of Rs. 14 Lakhs against which 5 blank cheques were taken from him by the complainant's mother and the complainant was the witness to the same. In August 2020, complainant had transferred Rs. 4 Lakhs to him through online transfer. The complainant's mother, however, failed to advance the remaining loan amount of Rs. 10 Lakhs and the complainant presented the cheque in dispute for Rs. 4 Lakhs. DW-1 has relied on:

i) Loan agreement dated 29.12.2020 [Ex. CW-1/D1]

9. In his cross-examination, witness has admitted his signature on all the four pages of loan agreement [Ex. CW-1/D1] including that of stamp paper. He further deposed that he signed the same after carefully reading its contents. Accused has affirmed his statement u/s. 313 CrPC to the effect that the loan in question of Rs. 4 Lakhs advanced by the complainant is mentioned in the loan agreement [Ex. CW-1/D1]. He has further admitted that in para 2 of the said agreement [Ex. CW-1/D1], the total loan amount is mentioned as Rs. 14,18,000/- and not Rs. 14,00,000/- and that Rs. 14,18,000/- is mentioned therein as 'received through cash'. Witness made a voluntary statement that even though it is mentioned as 'received through cash', mother of the complainant did not pay Rs. 10 Lakhs to him. When the witness was asked to point out if Rs. 4 Lakhs (loan in question) was mentioned anywhere in the loan agreement [Ex. CW-1/D1], he deposed that Rs. 2 lakhs and Rs. 2,18,000/- as mentioned in para 2 are the amount advanced by the complainant and that Rs. 18,000/- was charged as interest for 3 months. He has admitted that in para 1 serial no. 1 of the loan agreement [Ex. CW-1/D1], details of the cheques are mentioned. Further in serial no. 2 of para 1, cheque number is mentioned and amount is left blank and serial no. 3, 4 and 5 are crossed. Accused has denied the suggestion that he had given only 2 cheques at the time of loan agreement and not 5 cheques. He then admitted receiving of legal demand notice from complainant through WhatsApp and

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that he has not replied to the same. Accused has further denied the suggestion that the loan agreement [Ex. CW-1/D1] was only for cash loan of Rs. 14,18,000/- and that the loan in question of Rs. 4 lakhs was not a part of the loan agreement. Thereafter, on the same day, accused closed his DE.

10. Final arguments have been heard at length. Written submissions were also filed from both sides. Complete record has been perused carefully. 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 that the accused has repeatedly admitted the receipt of Rs. 4 Lakhs as loan from the complainant in his statement u/s. 251 CrPC, then under 313 CrPC and also in his examination in chief. That there is no cash transaction involved and the loan amount transferred to the accused on 28.08.2020 is an undisputed fact. That the only defence raised by the accused is that the loan in question was a part of the loan agreement dated 29.12.2020 and since the same was to be repaid in 1 year, the cheque in dispute has been presented at a pre-mature stage. Ld. Counsel asserted that accused has failed to rebut the presumptions raised against him. In this regard, he submitted that:
i) Accused has miserably failed to show from the loan agreement dated 29.12.2020 that the loan in question was included therein. He has only made an attempt to link

Rs. 2 Lakhs and Rs. 2.18 Lakhs mentioned in the agreement to be the loan advanced by the complainant.

ii) When accused was asked about the discrepancy of Rs. 18,000/- during his cross examination, only then he tried to explain for the first time that it was towards

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interest. Accused further failed to explain that loans shown in the agreement dated 29.12.2020 are all shown to be in cash which he admittedly signed after carefully reading.

iii) There is no explanation as to why loan of 4 lakhs (transferred in two instalments of 2 Lakhs each) was mentioned in 2 entries rather than a single entry in the consolidated agreement executed after 4 months.

iv) The defence of 5 blank cheques also holds no water since accused admittedly stated in his cross-examination that serial no. 3, 4 and 5 of para 1 of agreement are crossed out and details of cheques are mentioned in serial no. 1 and 2 only.

v) Accused further failed to give any probable reason for not answering to the legal demand notice if had several defences to make, as such, accused has created concocted stories in his defence.

11. Per contra, Ld. Counsel for the accused has prayed for dismissal of the complaint and acquittal of the accused primarily on the ground that the accused has successfully rebutted the presumption raised against him. In this regard, he submitted that:

i) That on one hand complainant advanced a loan to accused on 28.08.2020 for a period of 2 months and on the other hand, he entered into a loan agreement dated 29.12.2020 which creates a doubt upon the complainant's story as to why a further loan was being advanced if the accused has already failed to repay the earlier loan.

ii) That the complainant was aware of the issues with the accused's bank as per para 5 of the affidavit of pre-summoning evidence, despite that he presented the cheque of accused very next day without any intimation to the accused.

iii) That the cheque in dispute was given by way of security against the loan agreement dated 29.12.2020 and was not issued against any liability. That the complainant was not in possession of the cheque in dispute till 29.12.2020 which is why it was not presented for encashment from 30.10.2020 to 29.12.2020 i.e. after the expiry of 2 months period of loan dated 28.08.2020.

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iv) That a consolidated loan agreement dated 29.12.2020 was executed between the mother of the complainant and the accused wherein 2 partly filled and 3 blank cheques were given to the complainant's mother and the same is reflecting in para 5

of the agreement. That the loan amount in question of Rs. 4 Lakhs was consolidated in the loan agreement dated 29.12.2020 which is why the cheque in dispute was issued in favour of the complainant. Further, serial no. 3, 4 and 5 of para 1 of loan agreement are crossed because three cheques were given in blank by accused.

iv) That no cheque was given to the complainant at the time of advancement of loan in question which is why no cheque was presented after completion of 2 months from the advancement of said loan. It is highly improbable and irrational that accused would have taken a further loan to repay the old loan of the complainant.

v) That the complainant in his cross-examination has admitted that the loan agreement dated 29.12.2020 was a consolidated loan agreement which means that same includes multiple transactions including the present transaction in dispute.

vi) That the complainant has denied the receiving of 5 cheques at the time of execution of loan agreement dated 29.12.2020 despite him admittedly being the sole witness to the agreement. On the other hand, para 5 of affidavit by way of pre-summoning evidence shows the contrary.

vii) That complainant has admitted the receiving of one cheque at the time of execution of loan agreement dated 29.12.2020, however, he has failed to explain why it was issued in his name if he was not a party to the said agreement. This goes to show that agreement dated 29.12.2020 was a consolidated agreement which includes the loan in question as well.

viii) That Rs. 14,18,000/- as mentioned in the loan agreement dated 29.12.2020 is the total loan amount including the interest in totality.

ix) That the complainant's mother has filed a civil recovery suit against the accused on the basis of agreement dated 29.12.2020 from which it is clearly reflecting that the said loan agreement includes multiple transactions between the parties herein and the

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said agreement was the last and final document or consolidated loan agreement executed between the parties.

x) That in the said civil suit, it is stated by the plaintiff that the amount of Rs. 2 L was only advanced to the accused on 29.12.2020, in such circumstances it is highly improbable that accused handed over a cheque for Rs. 4 Lakhs.

Ld. counsel for accused has relied on judgment in Basalingappa v. Mudibasappa (2019) 5 SCC 418 to support his arguments on the extent of burden of proof on the accused.

12. 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;

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(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 due course of the cheque, within fifteen days of the receipt of the said notice.Explanation.--For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

13. 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.

14. 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- 1/2] 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 bank return memo [Ex. CW-1/3]. The receipt of legal demand notice [Ex. CW-1/4] stands proved through the postal receipts [Ex. CW-1/5] PADMA LANDOL LANDOL Date:

2023.02.20 18:03:51 +0530 and even otherwise admitted by the accused in his statement u/s. 251 Cr.PC as well as u/s. 294 CrPC. Therefore, the presentation of the cheque in dispute, its dishonourment and service of legal demand notice stand proved. It is also established that the cheque in dispute belongs to the accused and admittedly the signature on the same belongs to him. 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 read with Section 118(a) of the Negotiable Instruments Act, the case of the complainant stands proved.

15. 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.

16. 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 doubt. 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 PADMA LANDOL LANDOL Date:

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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:

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.

17. 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 loan in question being a part of consolidated agreement:

The primary defence taken by the accused is that the loan in question of Rs. 4 Lakhs admittedly advanced on 28.08.2020 was incorporated in the consolidated loan agreement dated 29.12.2020 [Ex. CW-1/D1] and since this loan agreement was for a period of one year, complainant could not have presented the cheque in dispute [Ex. CW-1/2] for encashment on the very next date i.e. 30.12.2020. Per contra, it is the case of the complainant that the loan agreement [Ex. CW-1/D1] was a separate transaction between his mother and the accused and that the complainant is relying on the bank return memo dated 28.01.2021 and not 30.12.2020. During the cross-examination of accused, when he was asked to show the relevant paragraph from the PADMA LANDOL LANDOL Date:

2023.02.20 18:04:05 +0530 loan agreement [Ex. CW-1/D1] wherein loan in question has been incorporated therein, accused deposed that the amount of Rs. 2,00,000/- and Rs. 2,18,000/- as mentioned in para 2 is the amount advanced by the complainant and Rs. 18,000/- was charged as interest for 3 months.

Para 2 of the loan agreement [Ex. CW-1/D1] bears mention of three amounts i.e. Rs. 10,00,000/-, Rs. 2,00,000/- and Rs. 2,18,000/-, all received through cash. However, it is an admitted position that the complainant had advanced the loan of Rs. 4 Lakhs in two parts i.e. Rs. 2,00,000/- each via bank transfer both on 28.08.2020. Firstly, the loan agreement [Ex. CW-1/D1] nowhere mentions that the two payments of Rs. 2,00,000/- and Rs. 2,18,000/- were already paid by complainant to the accused on 28.08.2020 through bank transfer, out of which Rs. 18,000/- was charged as the interest. In other words, the loan agreement nowhere says that the earlier loan dated 28.08.2020 between parties herein are to be considered as part and parcel of the said agreement. In fact, para 2 of loan agreement says that the amount of loan of Rs. 14,18,000/- has been received by the first party (i.e. the accused) from the second party (i.e. Smt. Kirpal Kaur, the mother of complainant). Arguendo, even if it is assumed that loan in question was a part of the agreement [Ex. CW-1/D1], no

explanation is given by the accused why the two amounts are mentioned in the loan agreement [Ex. CW-1/D1] as received from second party and not complainant and further, no explanation is given why the amounts are mentioned as received through CASH when the same is admittedly received through bank transfer. In his cross-

examination, accused has deposed that even if the amount of Rs. 10,00,000/- is mentioned as received through cash, same is not paid by complainant's mother. However, no explanation of any sort is given by the accused as to why he entered into such an agreement where the terms mentioned therein is contrary to the reality as alleged by him in Court. Secondly, accused neither examined his wife who was also a party to the loan agreement [Ex. CW-1/D1] or lead any other evidence in support of his defence. This being the case, the defence of the accused being only a bald PADMA LANDOL LANDOL Date:

2023.02.20 18:04:12 +0530 statement and not corroborated by the loan agreement itself or any other evidence whatsoever, is unbelievable and hence, fails.

II. Defence of cheque in dispute issued at the time of loan agreement- Next defence of accused is that he had issued 5 blank cheques (only signed) to the complainant at the time of execution of loan agreement [Ex. CW-1/D1] and the cheque in dispute was one of those cheques. Hence, complainant could not have presented the cheque in dispute the very next day of the execution of loan agreement. Per contra, it is the case of the complainant that only two cheques were given at the time of execution of the loan agreement and the cheque in dispute was given as a post dated cheque at the time of advancement of loan in question dated 28.08.2020. The loan agreement [Ex. CW-1/D1] was put to the accused in his cross-examination wherein he admitted that serial no. 3, 4 and 5 of para 1 of the agreement have been crossed and details of cheques are mentioned only in serial no. 1 and 2. No reason or explanation came from accused as to why details of only two cheques are mentioned in the loan agreement when allegedly he had issued 5 cheques. In the final arguments, Ld. Counsel for the accused submitted that serial no. 3, 4 and 5 were crossed because the three cheques were blank.

Perusal of para 1 of loan agreement [Ex. CW-1/D1] reflects that in serial no. 1, amount is mentioned as Rs. 5,00,000/- and cheque no. as 058773. In serial no. 2, amount is mentioned as 'Blank' and cheque no. as 000026. Further, serial no. 3, 4 and 5 are crossed. If three more blank cheques were issued by accused, same could have been mentioned in serial no. 3, 4 and 5 as 'blank', the same way details of a blank cheque is mentioned in serial no. 2, however, same has not been done and Ld. Counsel for accused has failed to give any explanation to this effect during his arguments. Further, details of cheque in dispute bearing no. 000261 for Rs. 4,00,000/- [Ex. CW-1/2] is nowhere mentioned in the loan agreement [Ex. CW-1/D1] to have been issued by the accused at the time of its execution. That being the case, when the oral statement of accused is not supported by his own loan agreement or any other PADMA LANDOL LANDOL Date:

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III. Attempt to pick holes from the complainant's version:

i) In his final arguments, Ld. Counsel for the accused has contended that the complainant advanced the loan in question on 28.08.2020 for two months' period and before the said loan is repaid, he entered into the loan agreement [Ex. CW-1/D1] with accused which makes the story of complainant unbelievable as to why anyone would enter into a subsequent loan when the first loan is not paid off.

This argument does not find any force because firstly, it is the complainant's case that both the loan transactions were separate and independent which could not be rebutted by the accused as already discussed in the preceding paragraphs. Secondly, the loan agreement [Ex. CW-1/D1] was entered into between the complainant's mother on one side and the accused and his wife on the other side. Complainant was only a witness to the loan agreement. Complainant and his mother are two separate individuals and there are absolutely no grounds to assume that complainant's mother entered into the loan agreement on behalf of the complainant. Furthermore, even if the complainant had entered into a subsequent loan agreement, it is not conceivable that he would not have done so when the earlier debt is not repaid when it is an admitted fact that the accused had a long standing relation with the complainant's late father. In the first blush, this may seem to have traces of doubts but it is not strong enough to regard it as an impossible transaction when there are no other evidence supporting the defence of accused.

ii) Ld. Counsel for accused has further argued that as per the complainant's case, on 29.12.2020 the accused had called the complainant's mother for an urgent cash loan stating some bank emergency and that his account might get freezed if he does not deposit certain amount in his bank. Ld. Counsel for accused has argued that since PADMA LANDOL LANDOL Date:

2023.02.20 18:04:26 +0530 complainant was fully aware of financial problem with the accused, he could not have presented the cheque in dispute on the very next day without any prior intimation.

This argument is again devoid of merits because the loan in question for Rs. 4 lakhs was admittedly received on 28.08.2020 which was for 2 months period as per complainant's version. After two months, accused sought for some more time to make the payment and on 29.12.2020 after receiving amount from complainant's mother which is stated to be a separate transaction, accused asked the complainant to present the cheque in dispute. During cross-examination, complainant, CW-1 has deposed that he has been regularly following up with the accused from the date of the cheque in dispute till its presentment and that he had informed the accused before presentation of the cheque in dispute. Accused has not been able to impeach the credibility of the witness in any manner and when this fact is seen in conjunction

with the admission of loan in question, non-payment of same by accused in his statement u/s. 251 CrPC and the bank statement of complainant [Ex. CW-1/1] showing the transaction, it appears that complainant was well within his rights to present the cheque in dispute firstly on 30.12.2020 and then on 27.01.2021. Hence, the argument of accused fails.

iii) Ld. Counsel for accused has stressed on the word 'consolidated' for the loan agreement dated 29.12.2020 [Ex. CW-1/D1]. It is his contention that the said loan agreement was a consolidated loan agreement which is admitted by the complainant, CW-1 in his cross-examination. He has argued that since it was a consolidated agreement, it also includes the loan in question 28.08.2020. It is to be noted that the loan agreement [Ex. CW-1/D1] nowhere uses the term 'consolidated' and even otherwise, it bears no clause which includes the loan in question therein. As already seen in the preceding paragraphs, there is no mention of the complainant's name as a lender or date of advancement of Rs. 4,00,000/- on 28.08.2020 to accused through bank transfer. Further, even though during his cross-examination, complainant PADMA LANDOL LANDOL Date:

2023.02.20 18:04:32 +0530 admitted that it was a consolidated loan agreement, no question was put to him as to what did he mean by the term 'consolidated'. This argument of the accused is nothing short of an assumption without any basis. In view of the same, this argument also finds no force.

iv) With respect to the defence of 5 blank cheques, Ld. Counsel for accused has further argued that the para 5 of the loan agreement [Ex. CW-1/D1] specifically mentions about 5 cheques being given to the complainant and mere denial by the complainant does not shift the onus back to the accused. He has even cited Sec. 91 and 92 of Indian Evidence Act, 1872 in this regard. Yet again, this argument is devoid of merits, reason being accused is relying on para 5 which mentions 5 original cheques, however, he cannot turn a blind eye to para 4 of the same agreement which mentions about 4 original cheques and thereafter in the serial no. 1 and 2, details of only 2 cheques are mentioned. Now, accused cannot approbate and reprobate at the same time when otherwise he has failed to establish issuance of 5 cheques inclusive of cheque in dispute at the time of execution of loan agreement.

v) Ld. Counsel for accused has contended that the complainant in his cross-

examination has admitted receiving of a cheque vide loan agreement dated 29.12.2020 [Ex. CW-1/D1] in the words "it is correct that in the loan agreement one cheque was issued in my name", and since no explanation has been given by complainant as to why such a cheque was issued when he was not a party to the agreement, it is apparent that the loan agreement [Ex. CW-1/D1] was a consolidated loan agreement in which loan in question has been included.

This appears to be a far fetched argument because firstly, specific question is not put to the complainant if the said cheque is the one mentioned in serial no. 1 of para 1 of loan agreement i.e. cheque no. 058773 for Rs. 5,00,000/- mentioned as Manjot in bracket or any other cheque not mentioned in the agreement, more specifically the cheque in dispute. In fact, complainant has denied the suggestion that PADMA LANDOL LANDOL Date:

2023.02.20 18:04:40 +0530 cheque in dispute was one of the 5 cheques given by accused and has deposed that the number of cheques given at the time of execution of loan agreement was lesser than 5. Secondly, when the cheque in dispute itself is nowhere mentioned in the loan agreement or that cheque in dispute was given during its execution towards security for the loan in question as suggested by Ld. Counsel for accused, a conclusion that loan in question was included in the loan agreement [Ex. CW-1/D1] is far fetched and does not seem to be plausible. Accused has only made a bald statement with no supporting evidence of any sort. As such, this argument also falls flat.

vi) In the conclusion of his arguments, Ld. Counsel for accused has referred to a civil suit for recovery filed by complainant's mother against the accused on the basis of the loan agreement [Ex. CW-1/D1] and has argued that from para 5 and 6 of the plaint therein it is apparent that loan agreement [Ex. CW-1/D1] includes multiple transactions between the parties herein and it was the last and final document executed between the parties. Hence, the complainant cannot term the loan in question as a separate transaction.

This agreement again finds no merit since it is a bald averment devoid of corroboration from any document, be it the plaint or otherwise and even otherwise such a fact has come before the court for the first time during final arguments.

Furthermore, accused could have replied to the legal demand notice and asserted regarding the loan agreement and pre-mature nature of cheque in dispute, however he has not done so despite receiving the demand notice. Though non- sending of reply per se is not fatal to the defence of the accused, however, it bears some relevance when the defence is otherwise weak or improbable. The entirety of the facts goes to show that the defence raised by the accused is highly improbable. The word 'probable' is defined in Black's Law Dictionary as "having the appearance of truth; having the character of probability; appearing to be founded in reason or experience." As already discussed, the defence of the accused is highly PADMA LANDOL LANDOL Date:

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18. 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 defences is on the accused....."

19. 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 probabilise 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 contrary to his own document i.e. the loan agreement [Ex. CW-1/D1].

PADMA LANDOL LANDOL Date:

2023.02.20 18:04:52 +0530 In fact, it is a clear case of admission wherein the accused has repeatedly admitted the loan in question for Rs. 4 Lakhs. Same is backed by bank statement of complainant on record [Ex. CW-1/1] which has gone unchallenged. Further, in his statement u/s. 251 CrPC, accused has stated that the loan is not repaid. In the above view, the complainant has proved that the accused had issued the cheque in dispute in its 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 Anil Kumar Saini is, thus, held guilty and stands convicted for the said offence. Announced in Open Court today on 20.02.2023.

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Certified that this judgment contains 21 pages and each page bears my signatures.

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New Delhi, PHC/Delhi/20.02.2023.