Through:Pankaj Malik vs Vagisha Suneja .....Accused on 29 April, 2023

IN THE COURT OF MS. AAKANKSHA, METROPOLITAN
MAGISTRATE, (NI ACT)-07
SOUTH-WEST DISTRICT, DWARKA COURTS, NEW DELHI

Ct. Case No. 4129 of 2018
CNR No. DLSW02-004991-2018

Brig M L Khattar .....Complainant

Through:Pankaj Malik, Advocate

Versus

Vagisha Suneja .....Accused

Through: Pujya Kumar Singh, Advocate

(1)	Name of the complainant	Mr. Brig. M.L. Khattar (Retd.) S/o Late Sh. R.S. Khattar R/O A-149 Shankar Garden, Vikas Puri, New Delhi-110018.
(2)	Name of the accused	Ms. Vagisha Suneja W/o Sh. Manish Suneja R/o C-149, 2nd Floor, Vikas Puri, New Delhi-110018.
(3)	Offence complained of or proved	Section 138 Negotiable Instruments Act, 1881
(4)	Plea of accused	Pleaded not guilty
(5)	Date of institution of case	24.01.2018

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(6)	Date of conclusion of arguments	01.04.2023
(7)	Date of Final Order	29.04.2023
(8)	Final Order	ACQUITTAL

JUDGMENT

1. The complainant Brig M L Khattar (Retd.) has instituted this complaint u/s 138 Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') against accused Vagisha Suneja, on 24.01.2018.

2. The factual matrix as can be culled out from the complaint is that complainant's son was in a financial mess in 2012 and complainant intended to dispose off his property bearing no. C□148, Vikaspuri, Delhi□18 to bail his son out of this situation and then settle for a smaller property utilizing the monetary difference for his son and he approached various property dealers including the accused who was also his neighbour, accused and her husband approached complainant with various offers and to various prospective buyers and sellers in April, 2012, subsequent to negotiations and active participation of accused and her husband, two deals were materialized, complainant sold his about property to B.R. Memorial Society on 20.04.2012 and on the same day complainant purchased a property bearing no. A□149, Shankar Garden, Vikaspuri, Delhi□18, thus the accused and her husband AAKANKSHA were aware of the fact that the complainant had disposable Digitally signed by AAKANKSHA Date: 2023.04.29 Ct. Case No. 4129/2018 Page 2 of 41 16:24:04 +0530 money with him and accused pestered the complainant for a friendly loan of Rs.80,00,000/□for 4 years and offered lump sum interest of Rs. 45,00,000/□, complainant prematurely broke his FDs and gave his life time savings, vide cheque no. 104289 dated 14.06.2013 for a sum of Rs. 66,00,000/□from his S/A No. 6042742780 and Rs. 14,00,000/□vide cheque no. 726100 dated 27.06.2013 from his S/A No. 03281570004112, in discharge of her liability including the consolidated interest accused issued the cheque in question bearing no. 007486 dated 06.12.2017 drawn on Axis Bank, Vikaspuri, Delhi for an amount of Rs. 1,25,00,000/□with assurances of its encashment, the stipulated term of 4 years of friendly loan came to an end on 26.07.2017 but before the complainant could present the said cheque, he was approached by husband of accused with request to defer the presentation of cheque for 3 months, on 9.11.2017 he and his son met accused on 19.11.2017 when accused requested to defer the presentation of cheque again for a fortnight, thereby the cheque in issue was presented by complainant on 07.12.2017. However, to the complainant's dismay the said cheque was returned unpaid with remarks "Drawer Signature Differs" vide return memo dated 08.12.2017. The complainant then issued a legal notice dated 22.12.2017 calling upon the accused to pay the cheque amount within 15 days from the receipt thereof, the same was duly served upon the accused but the accused gave a frivolous reply instead of complying with it, thus constraining the complainant to file this complaint u/s 138 Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') seeking redress against the AAKANKSHA dishonor of the cheque in question.

3. With a view to establish a prima facie case in order to enable the court to summon the accused, complainant led pre□summoning evidence by way of affidavit Ex. CW□A. The complainant relied upon following documentary evidence:

(a) Statement of account of complainant bearing S/A No. 6042742780, which is Ex. CW1/2.

(b) Statement of account of complainant bearing S/A No. 03281570004112, which is Ex. CW1/3.

(c) Original cheque bearing no. 007486 dated 06.12.2017 for a sum of Rs. 1,25,00,000/□drawn on Axis Bank, which is Ex.

CW□1/4.

(d) Original cheque return memo dated 08.12.2017, which is Ex. CW1/5.

(e) Office copy of legal notice dated 22.12.2017, which is Ex. CW□1/6.

(f) Postal receipt, which is Ex. CW□1/7.

(g) Tracking report, which is Ex. CW1/8.

(h) Reply to legal notice, which is Ex. CW1/9.

Complainant closed his pre□summoning evidence on 25.01.2018.

4. On the basis of above material and finding a prima facie case made out against the accused, the accused was summoned vide order dated 25.01.2018. Accused entered her AAKANKSHA first appearance on 23.04.2018. Digitally signed by AAKANKSHA Date: 2023.04.29 Ct. Case No. 4129/2018 Page 4 of 41 16:24:26 +0530

5. Notice u/s 251 Cr.P.C. was framed against accused on 28.07.2018 stating out to her the substance of accusation, to which she pleaded not guilty and claimed trial. Her defence was recorded at the stage of framing of notice in compliance of directions passed by Hon'ble High Court of Delhi in Rajesh Aggarwal v. State 171 (2010) DLT 51. The accused took defence that she did not issue the cheque but it bears her signature, she received the legal notice and also replied to the same, she has not taken any loan from complainant, complainant was her lawyer in 2014 and her cheques and other documents were in his possession, complainant has misused one of her cheque in possession of complainant.

6. Accused was granted right to cross□examine the complainant on an application u/s 145(2) NI Act vide order dated 01.09.2018. The complainant was examined as CW□1 thereby adopting his pre□ summoning evidence as post□summoning evidence and was cross□examined and discharged. Vide

separate statement of complainant, complainant evidence stood closed on 06.01.2020.

7. Statement of accused was recorded u/s 313 Cr.P.C. r/w section 281 Cr.P.C. on 20.11.2021 wherein all the incriminating evidence was put to the accused and she was AAKANKSHA granted an opportunity to explain the circumstances appearing against her at trial. While explaining the circumstances Digitally signed by AAKANKSHA Date: 2023.04.29 16:24:35 +0530 appearing in evidence against him, accused stated without oath that she along with her husband had brokered deals for complainant but she had not taken any friendly loan from complainant, the cheque in issue bears her signature but the other details have not been filled by her, her husband used to get the cheques signed from her in a blank signed manner and keep it with him, she does not know to whom her husband used to give her cheques, she did not receive any legal notice but it bears her correct address, the cheque in question has been misused, the complainant was her advocate and complainant might have her other cheques as well, she used to deal with the complainant regarding properties and the cheque in question may have gone to the complainant for one of the deals or for payment of the deal. Accused preferred to lead evidence in her defence.

8. At the stage of defence evidence, accused examined bank witness Sh. Suraj Saxena as DW1 who relied upon a letter dated 03.09.2022 which is Ex. DW1/1 and certified copy of cheque bearing no. 007486 which is Ex. DW1/2. He was duly cross□examined and discharged. Vide separate statement of Ld. counsel for accused, defence evidence stood closed on 03.09.2022.

9. At the stage of final arguments, Ld. counsel for complainant submitted that the amendment with respect to limitation period of presenting the cheque was not in force at AAKANKSHA the relevant time and the cheque in issue has been presented Ct. Case No. 4129/2018 Page 6 of 41 2023.04.29 within six months on 07.12.2017, accused admitted issuance of cheque in plea of defence and admitted receiving of notice but denied the same in her statement u/s 313 Cr.P.C., it is not disputed that cheque was not given to complainant giving credence to the fact that cheque was given in natural course, if accused came to know that her cheque has been misused natural instinct would be to file a complaint specially when cheque is of huge amount, it is admitted fact that there were property dealings between them, complainant disposed of property and purchased a new one with intervention of accused and her husband which fact has been admitted by accused in her statement u/s 313 Cr.P.C., that complainant gave Rs. 80 lacs to accused on consolidated interest of Rs. 45 lacs to be repaid after 4 years, no percentage or arithmetical calculation was done in calculating the interest, in reply to legal notice there is clear admission that there was some arrangement and understanding, para 8 of the reply demolishes the case of accused where accused admits receiving Rs. 80 lacs from complainant through RTGS, the other transactions are independent, there is no scope of cash transaction when particular mode is recognised by parties, in application u/s 145(2) Cr.P.C. accused states having paid all amount in cash to complainant, that when one person does not owe any money to complainant, what would be the reason to pay this amount and assuming the said cash was paid, the onus was upon accused to prove it, evidence of DW□1 is not relevant as it is not the case of accused that the cheque does not bear her signature, it is immaterial if the cheque is filled by any other person once AAKANKSHA accused admits her signature on the cheque, the cheque travelled to complainant through legal means and therefore Digitally signed by AAKANKSHA Ct. Case No. 4129/2018 Page 7 of 41 Date:

2023.04.29 16:24:53 +0530 legal presumption is in favour of complainant and if there are tax defaults complainant is answerable to the government and not to accused and prayed to convict the accused.

Ld. counsel for the complainant also filed written arguments incorporating the above submissions and stating that clear and emphatic admission of accused having received Rs. 80,00,000/- is in her reply to legal notice and also in her application u/s 145 Cr.P.C., no suggestion has been put to complainant that he misappropriated the cheque, the bank witness also supported the fact that the cheque book including the cheque in issue was issued to the account of accused and returned for difference in signature, accused admitted receiving legal notice in her plea of defence but refused in her statement u/s 313 Cr.P.C., accused denied having any business transactions or brokering any deal for complainant by her husband in reply of the legal notice but in SA she admitted having brokered deals for complainant, when a blank signed cheque is handed over to a person, it means that implied authority to fill up the blanks has been given to the holder of the cheque, there is no provision in Income Tax Act which makes an amount not shown in ITR unrecoverable, no suggestion were given to complainant on defence taken by accused and relied upon the cases of Lekhraj Sharma v. Yashpal Gupta decided on 30.06.2015, Bir Singh v. Mukesh Kumar Cri. App. No. 230-231 of 2019 decided on 06.02.2019, Oriental Bank of Commerce v. Probodh Kumar Tewari AAKANKSHA Appeal No. 1260 of 2022 decided on 16.08.2022 and K.N. Beena v. Muniyappan & Anr. MANU/SC/0661/2001. by AAKANKSHA

10. Per contra, Ld. counsel for accused submitted that the relationship between complainant and accused is not disputed, complainant is a retired brigadier and an advocate, he has been advocate of accused as well, accused has admitted receipt of Rs. 66 lacs on 14.06.2013 and Rs. 14 lacs on 27.06.2013 through RTGS, complainant gave cash to accused and accused gave cheque in question to complainant, complainant has not mentioned in legal notice the date on which cheque was given to him, complainant says that he gave Rs. 80 lacs to accused for 4 years and accused was to repay Rs. 1.25 crore but is there any agreement that accused had to repay Rs. 1.25 crore? and if was true then complainant should have mentioned the same in legal notice and complaint but the same has not been proved even in evidence, that admittedly the cheque bears two handwritings, in cross-examination complainant admitted himself to be advocate of accused, he did not disclose anything in his ITR and it is true that complainant is answerable to government but the complainant is not a lay man, he is an advocate and brigadier, he admitted receiving certain amounts from accused in his cross examination but did not disclose the same earlier nor any endorsement was made on the cheque nor did he deduct such amount, he further states that he was given the cheque on the same day when second cheque was given to accused i.e. 27.06.2013, it is not the case of complainant that the cheque was given later but DW-1 deposed that the cheque book containing the cheque in question was AAKANKSHA issued to accused on 21.03.2014, when the cheque was not in existence on 27.06.2013 how is it possible that accused handed Ct. Case No. 4129/2018 Page 9 of 41 2023.04.29 over it to complainant for legal liability, that for such a big amount there is no loan agreement, he voluntarily stated buying stamp paper but no reference of it is there in his complaint,

accused has also filed an application u/s 340 Cr.P.C. against the complainant and there is no friendly loan in which a person could take Rs. 1.25 crore.

Ld. counsel for the accused also filed written arguments incorporating the above submissions and stating that complainant was advocate/legal advisor for accused in several matters and was given various cheques by accused, one of which has been misused by complainant, complainant has failed to prove that there was any loan agreement which contented that accused has promised lump sum interest of Rs. 45,00,000/□and Section 92 Evidence Act excludes all oral evidences, accused only mediated the deal for complainant but never took any loan, accused never issued any cheque in favour of complainant in discharge of her liability and has never agreed to consolidated interest, complainant has admitted filling up the details in his own handwriting, neither the accused nor her husband had ever entered into any deal with complainant, the transaction which had taken place between complainant and the accused/her husband was that by quid pro quo arrangement the husband of the accused had given Rs. 80,00,000/□in cash and complainant had given an equivalent RTGS transfer of the said amount on 14.06.2013 and 23.06.2013, their case is strengthened with evidence of DW1 AAKANKSHA and it is clear that complainant has committed perjury, it is admitted by complainant that he was given the cheque by by AAKANKSHA accused on the day when he issued second cheque/RTGS transfer to accused in June, 2013 and it has come on record that cheque book was issued to accused on 21.03.2014 as per Ex. DW1/1 and it is clear that the accused could not have given the cheque in issue to the complainant on 08.12.2017 as alleged by complainant, complainant has failed to discharge the initial burden and has failed to place on record any material evidence in support of his case, the accused stood the test of cross□examination when she was cross□examined on 20.11.2021, CW1 has admitted that he is an advocate since November 2000, he also admitted that he had not disclosed the amount allegedly given by him while purchasing the property of Rs. 1,70,00,000/□in his ITR, when he was confronted with the account statement of accused Ex. CW1/D1 reflecting number of entries he gave evasive answer, he has not mentioned any place, date, month and year of handing over the cheque, he has also admitted transfer of Rs. 10,00,000/□by accused through RTGS on 27.07.2013, he also admitted transfer of Rs. 2,00,000/□by accused through RTGS on 30.05.2016, Rs. 5,00,000/□by accused in 2011 for sanction of site plan of building and that in 2011 complainant entered into an understanding with husband of accused for reconstruction/development of property no. C□148, Vikaspuri, Delhi and Rs. 5,00,000/□towards sanctioning of the plan was paid by accused and the remaining amount of Rs. 10,000/□was paid by complainant, complainant admitted that no loan agreement was executed and cooked up a false story of purchasing stamp papers, accused issued the cheque with cursory signature which was to be used for details of bank AAKANKSHA account and not for presenting it as there did not exist any Ct. Case No. 4129/2018 Page 11 of 41 Date:

> business due or legal due as complainant had already received Rs. 80,00,000/□in cash from accused, complainant did not have any money lending licence and in fact is a practicing advocate and it is not permissible in law to do money lending business, no basis has been disbursed as to how he calculated interest of Rs. 45,00,000/□, the cheque was not presented by complainant during the period of its validity and prayed to acquit the accused. Ld. counsel for accused relied upon the following cases□Ircon International Ltd. v. Union of India 2003 (108) DLT 656, Mahila Vinod Kumari v.

State of MP (2008) 8SCC 34, C.S. Aggarwal v. State 2019 (259) DLT 113, Reverend Mother Marykutty v. Reni C.Kottaram & Anr. (2013) 1SCC 327, Paresh Rastogi v. State of UP 2018 SCC OnLine SC1786, Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & Anr. 2022 LiveLaw (SC) 830, Anil Aggarwal v. State decided on 12.08.2015 passed by Hon'ble High Court of Delhi, Devender Kumar v. Khem Chand Crl.Rev.P679/2012 passed by Hon'ble High Court of Delhi and PA Joseph v. Joseph PA passed by this court.

In rebuttal, Ld. Counsel for complainant submitted that the relationship between complainant and accused was good and therefore need of written agreement was dispensed with and it was not win for gain for complainant who gave his lifetime savings to accused.

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11. After hearing the arguments advanced on behalf of both the parties and perusing the record carefully, the appreciation of evidence and findings of the court are as below.

12. It would be apposite to first consider the legal position serving as base to the offence underlying Section 138 NI Act. The following legal requirements need to be satisfied in order to constitute an offence u/s 138 NI Act, as held by Hon'ble Supreme Court in the case titled as Kusum Ingots & Alloys Ltd. v. M/s Pennar Peterson Securities Ltd.: (2000) 2 SCC 745:

(i) that a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that 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;

(iii) that the cheque is returned by the bank unpaid either because of the amount of money standing to the credit of the 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 the bank;

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(iv) that the payee or the holder in due course of the cheque 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;

(v) that the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;

The above legal requirements are cumulative, meaning thereby that only if all the aforementioned ingredients are satisfied can the person who had drawn the cheque be held liable for offence u/s 138 NI Act.

13. Burden of proof: The claim based under the provisions of Negotiable Instruments Act is an exception to the general rule of law that burden of proof lies on the prosecution. The two specific provisions viz. Section 118 (a) and 139 of NI Act contemplates that a presumption is attached in regard to each and every negotiable instrument that the same was drawn and issued against due discharge of the liability and thus, whenever any claim is made on the basis of a negotiable instrument, the presumption has to be drawn in favour of the holder of the cheque (drawee) and the law has put the burden to rebut the presumption on the accused that the cheque was not AAKANKSHA issued by him against discharge of a debt or a liability. In case, Ct. Case No. 4129/2018 Page 14 of 41 16:25:57 +0530 the accused is not able to rebut the presumption and fails to prove his defence, the presumption becomes absolute and it has to be assumed that the cheque was issued by the accused in discharge of debt or liability and consequently, accused is assumed guilty of the offence. It was held by Hon'ble Supreme Court in the case of Rangappa v. Mohan: 2010 (11) SCC 441 that presumption of Section 139 of N.I. Act also includes the existence of legally enforceable debt:

14. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability.

Hon'ble Supreme Court, in the case of Hiten P. Dalal v. Bratindranath Banerjee: 2001 (6) SCC 16 held that the presumption mentioned in the section 139 NI Act is a presumption of law and not a presumption of fact and thus, this presumption has to be drawn in favour of the drawee and the burden to rebut the presumption with the probable defence is on the accused.

This is indeed an instance of the rule of 'reverse onus', where it is incumbent on the accused to lead what can be called 'negative evidence' i.e. to lead evidence to show non□existence of liability. Keeping in view that this is a departure from the cardinal rule of 'presumption of innocence' in favour of the accused and that negative evidence is not easy to be led by its very nature, it is now settled that the accused can displace this AAKANKSHA presumption on a scale of preponderance of probabilities and Ct. Case No. 4129/2018 Page 15 of 41 Date:

> the lack of consideration or a legally enforceable debt need not be proved to the hilt or beyond all reasonable doubts. The accused can either prove that the liability did not exist or make the non□existence of liability so probable that a reasonable person, ought under the circumstances of the case, act on the supposition that it does not exist. He can do so either by leading own evidence in his defence or even by punching holes in the case of the complainant in the testing ordeal of cross□examination. This

can be deciphered from relevant para no.21 of Hiten P. Dalal (supra):

> 21. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.

AAKANKSHA Further, in Bharat Barrel v. Drum Manufacturing: AIR 1999 SC 1008 Hon'ble Supreme Court held that the accused has to by AAKANKSHA rebut the presumption and mere denial of passing of consideration is no defence.

It is, thus, clear that in cases of Section 138 NI Act, upon proof of foundational facts, law presumes in favour of drawee that the cheque was issued by the accused in discharge, wholly or in part, of legally enforceable debt or liability and the burden to rebut the same is upon the accused. The burden does not have to be conclusively established but the accused has to prove his defence on preponderance of probability.

14. Now applying the above law to the facts of the present case, it has to be adjudged whether the legal requirements laid down hereinabove have been fulfilled in the instant case.

14.1. The first legal requirement is:

> "A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability."

At the outset, it has to be proved that the accused had AAKANKSHA issued the cheque in question on her account maintained with a bank for discharge of any debt or other liability. In the instant case, accused has admitted her signatures on the cheque in by Ct. Case No. 4129/2018 Page 17 of 41 16:26:32 +0530 question in her statement recorded u/s 313 Cr.P.C. and in notice framed u/s 251 Cr.P.C, even though the cheque was dishonored due to difference in signature. The cheque in question has also been drawn on the account maintained by her with Axis Bank. The said fact has not been denied by accused at any stage of proceeding.

It was held in the case of Kalamani Tex & anr. v. P. Balasubramanian: 2021 SCC Online SC 75 Hon'ble Supreme Court held that:

> "14. Adverting to the case in hand, we find on a plain reading of its judgment that the trial court completely overlooked the provisions and failed to appreciate the statutory presumption drawn under Section 118 and Section 139 of NI Act. The statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him."

The above said principle has also been crystallized by Hon'ble Supreme Court in the case of Basalingappa v. Mudibasappa: (2019) 5 SCC 418, by observing that:

> "25. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarize the principles enumerated by this AAKANKSHA Court in following manner:
>
> (i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

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

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

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence."

14.2. In the instant case, the accused having admitted her signatures on the cheque in question and the said cheque AAKANKSHA being drawn on her bank account, a mandatory presumption automatically arises in favour of complainant by virtue of by Ct. Case No. 4129/2018 Page 19 of 41 16:26:57 +0530 Section 118(a) r/w 139 NI Act that the cheque in question was issued by her in discharge of, whole or part of, legally enforceable debt or case liability.

14.3. Now the burden shifts upon accused to rebut the above presumption by raising a probable defence, by leading evidence or bringing such facts on record in the cross□examination of the complainant that could make the latter's case improbable. If, in such a case, the accused is proved to have discharged the initial onus of proof placed on him by showing that the existence of consideration was improbable or doubtful or illegal, then the onus will again shift back to the complainant who will then be under an obligation to prove it as a matter of fact and failure to do so

will disentitle him to any relief on the basis of the negotiable instrument (as held in Satish Sharma v. State NCT of Delhi & anr.: (2013) 204 DLT

289).

14.4. The accused preferred to discharge such burden by cross-examining the complainant witnesses and leading defence evidence. During cross-examination, CW-1 deposed, in brief, that after his retirement as brigadier he was practising law but at present he is not doing any work, he has not represented accused or her husband in any case but issued legal notice on their behalf in some property dispute, he does not remember the exact amount for which he sold property no. C-AAKANKSHA 148, Vikas Puri, Delhi in 2012 and he had no relation with accused or her husband prior to the said transaction, he knows by AAKANKSHA accused and her husband since 2011 when he wanted to dispose of his property, property bearing no. C-148, Vikas Puri, Delhi was in his name which he purchased in auction in 1978, he did not reconstruct the property in 2011 but first construction was made in 1980-82, he applied for reconstruction of house in MCD and sold the house in 2012 through husband of accused, he sold the house in 2012 for Rs. 4 crore but do not remember the commission given and mode of giving commission, he purchased next property for Rs. 1.70 crore, he has not disclosed the amount received by him by selling above property in his ITR, he also did not disclose the amount given by him for purchasing property of Rs. 1.70 crore in his ITR, after selling above property he gave Rs. 1.20-1.25 crore to his son, his son owed Rs. 3-3.5 crore at that time, he does not know whether accused is running a partnership firm in the name of Dream Line Inc., he does not know whether accused sold her own property in 2011, he does not remember whether he sent notice to accused with respect to property bearing no. 128, Block-D, Rose Wood City, Village Ghasola, Badshahpur, Sohna, Gurgaon Road, Haryana, he does not remember whether he made RTGS entries in Ex. CW1/D1 at point A to E, if some quid pro quo transaction was there between him and accused related to accepting cash in place of cheque it is not related to present case, he does not remember date, month or year of handing over of the cheque in issue but it was given on the same day when he gave second cheque to accused, on 27.07.2013 accused transferred Rs. 10 lac to him through RTGS, on 30.05.2016 accused transferred Rs. 2 lac to him AAKANKSHA through RTGS, these transfers have nothing to do with present case, in 2011 accused transferred Rs. 5 lac to him since he had Digitally signed by AAKANKSHA Date:

> Ct. Case No. 4129/2018 Page 21 of 41 2023.04.29 16:27:13 +0530 to apply for sanction of site plan of building, he entered into understanding with husband of accused in 2011 for reconstruction/development of property bearing no. C-148, Vikas Puri, Delhi which required sanction of plan from MCD and Rs. 5,10,000/-was to be submitted with MCD, Rs. 5 lac was paid by accused and he paid Rs. 10,000/-, but he shelved the plan and later the sanctioned plan was utilized by husband of accused in another transaction, from 2013-2016 financial transactions took place between him and accused, accused had joint bank account with her husband and he received money from the joint account, no loan agreement was executed for the present transaction, though he purchased stamp paper and asked accused to execute it but due to bonafide relations between them accused verbally assured him to return the money without execution of any agreement, there is no reference of said agreement

in his pleadings or affidavit, he also transferred Rs. 5 lac to accused after Rs. 80 lacs to refund the money of Rs. 10 lac given by accused as he was in need of money, all account transfers were done in joint bank account of accused and filed Ex. CW□1/10, accused filled amount in words and figures and name on the cheque but date was filled by him, AAKANKSHA he does not remember if amount and name on the cheque were filled in his presence and if signatures were put on the cheque Digitally signed by AAKANKSHA in his presence. Date: 2023.04.29 16:27:22 +0530 14.5. Accused examined bank witness Sh. Suraj Saxena as DW□1 who placed on record letter dated 03.09.2022 bearing endorsement no. AXISB/VKP/2022□23/SN/ Ex. DW□1/1 and certified copy of cheque no. 007486 Ex. DW□1/2. During cross□ examination he deposed that they do not hand over cheque or cheque book of a customer to a stranger or any other person without authorization, the clearing house informs the bank where bank account of drawer of cheque is maintained and they may inform the customer the fact of presentation of cheque.

14.6. It is admitted fact that the cheque in issue bears signature of accused. Although the cheque in question was dishonoured with the remarks "Drawer signature differs", however accused has never denied her signature on the cheque in issue during complainant's evidence or in defence evidence.

In fact, in her plea of defence and in her statement u/s 313 Cr.P.C. also accused categorically admitted that the cheque in issue bears her signatures. Thus, even if her signatures might have differed from the signature available in bank record, it is admitted fact that the signatures on the cheque in issue belonged to accused. It is also an admitted fact that complainant was practising law after being retired as brigadier.

14.7. The fact of complainant being in possession of cheque in issue is also not disputed however the manner in which complainant obtained possession is disputed. It is the complainant's case that after he sold a property in 2012 for Rs. 4 crore and purchased a smaller property on the same day for Rs. 1.70 crore, both with intervention of accused and her husband, he had disposable money and out of the same he lent Rs. 80,00,000/□to accused without any written agreement for a AAKANKSHA period of 4 years through two cheques dated 14.06.2012 and Digitally signed by AAKANKSHA Date:

2023.04.29 16:27:37 +0530 27.06.2013 for Rs. 66 lacs and Rs. 14 lacs respectively.

Whereas accused has stated in her plea of defence that since complainant was her advocate he might have her other cheques as well and he misused her cheque. In her statement u/s 313 Cr.P.C. accused stated that she and her husband used to broker deals for complainant, her husband used to get her cheques signed and she does not know to whom her husband used to give her cheques, the cheque in issue might have gone to complainant for some deal or for payment of some deal. The defence put by accused to CW□1 has been that accused never took any loan from complainant, complainant was her advocate, there were financial transactions between them, there was also a quid pro quo arrangement between her husband and complainant for taking cash in place of cheque, complainant already accepted Rs. 80 lacs in cash from accused and therefore no agreement of loan was there and

blank signed cheque was given to complainant which was misused by complainant.

14.8. Thus, the defence of accused is not clear. The accused is unsure as to why cheque in question was handed over to the complainant. Somewhere she states that since complainant was her advocate, he might have her other cheques also. Somewhere she states that she does not know to whom her husband gave her signed cheques and the cheque might have gone to complainant for some property deal. At another time, accused puts defence that complainant transferred Rs. 80 lacs to accused but also received Rs. 80 lacs in cash from AAKANKSHA husband of accused. Ld. counsel for accused has contended that complainant has not filed any agreement of loan of such a huge Digitally signed by AAKANKSHA Date: 2023.04.29 16:27:50 +0530 amount, he has not shown the loan amount in his ITR and the voluntary statement of complainant that he purchased stamp paper is made up story, which is discussed herein below.

14.8.1. Accused took plea in her defence u/s 251 Cr.P.C that since complainant was her advocate, he might have her other cheques also and he misused one of her cheques. However, if that was true, accused has failed to explain as to why would her advocate be in possession of her cheques, qua recovery of which she has not taken any action till date. It is not the case of accused that she handed over the cheque to complainant towards legal fee. Further, CW□1 has categorically denied being advocate of accused in any case although admitting practising law since his retirement. He also admitted that he only sent a notice on behalf of accused in some property matter. Going by common practice, a legal notice does not appear to have invited a fee of whooping amount of Rs. 1.25 crore i.e. the cheque amount in question. Further, when CW□1 denied representing accused in any legal case, accused failed to bring on record any such legal matter in which complainant was her advocate. No such defence was also put to CW□1 on behalf of accused during complainant evidence. Thus, accused has failed to prove her defence recorded at the stage of Section 251 Cr.P.C.

14.8.2. In her statement recorded u/s 313 Cr.P.C. accused stated that she does not know to whom her husband gave her signed cheques and the cheque might have gone to complainant AAKANKSHA Ct. Case No. 4129/2018 Page 25 of 41 by AAKANKSHA for some property deal. CW□1 has deposed that all the transactions were done from the joint bank account of accused and her husband. However, the cheque in issue has been drawn not on the joint bank account of accused and her husband but from the account of accused alone, suggesting some personal transaction with accused. Accused has denied having any business transactions or brokering any deal for complainant by her husband in reply of the legal notice Ex. CW□1/9 but in her statement recorded u/s 313 Cr.P.C. she admitted having brokered deals for complainant. When accused has admitted brokering deals for complainant by herself and her husband and complainant admitting dealing with them only through their joint accounts, the burden was also upon accused to prove as to why the amount of Rs. 80 lacs through bank transfer came to single account of accused alone and not to the joint account if that was indeed in pursuance to a property dealing. Accused failed to even put any such defence to CW□1 which she stated in her statement u/s 313 Cr.P.C. Further, accused failed to bring on record any such deal in payment of which the cheque would have been issued to complainant. When it is the statement of accused that she used to sign cheques and give it to her husband and she does not know to whom her husband handed over those cheques, the burden is also upon accused to disprove the fact that the cheque in issue was not handed over to complainant in discharge of legal liability.

But she has failed to disprove the same.

14.8.3. The defence put by accused to CW□1 has been totally different to her plea of defence and her statement u/s AAKANKSHA Ct. Case No. 4129/2018 Page 26 of 41 by AAKANKSHA 313 Cr.P.C. Accused has put defence that there was a quid pro quo arrangement between her husband and complainant for acceptance of cash in lieu of cheque and complainant transferred Rs. 80 lacs to accused but also received Rs. 80 lacs in cash from husband of accused and that complainant misused her blank signed cheque which was given to complainant. The same defence was taken by accused in her reply to legal notice Ex. CW□1/9 wherein it has been alleged that since the money received by complainant from sale and purchase of property was parked in his bank account and the loans of his son could have been repaid only in cash, complainant entered into arrangement with husband of accused for cash in lieu of bank entries. However, if that was true and there was transfer of Rs. 80 lacs from complainant to accused and complainant also received Rs. 80 lacs in cash from husband of accused, why was there a need of handing over blank signed cheque to complainant? Also when the cash was given by her husband to complainant, why was the equivalent amount of Rs. 80 lacs transferred to the single account of accused? Accused has failed to explain this aspect. Nor has the accused examined herself or her husband to prove any of such fact.

14.8.4. Further, in reply to legal notice accused has disputed issuance of two cheques by complainant for Rs. 66 lacs and Rs. 14 lacs and stated that the said amount was received through RTGS. The complainant has placed on record his bank account statements reflecting debit of Rs. 66 lacs AAKANKSHA towards account of accused vide cheque no.104289 in Ex. CW□1/2, which accused has failed to rebut. Further, the second Digitally signed by AAKANKSHA Date: 2023.04.29 16:28:59 +0530 transaction of Rs. 14 lacs reflected in Ex. CW□1/3 is through RTGS and not cheque. The fact remains that accused has indeed received an amount of Rs. 80 lacs in her account. Accused has further stated in her reply to legal notice that her husband gave Rs. 80 lacs in cash to complainant and complainant gave an equal amount through RTGS, then Rs. 10 lacs was repaid to complainant through RTGS on 27.07.2013, Rs. 2 lacs and Rs. 10 lacs was repaid to complainant through RTGS on 30.05.2016 and 01.07.2016 and since complainant did not have Rs. 58 lacs to pay to her husband, such amount remains outstanding from complainant. However, accused has failed to explain as to how such transfer of amounts are related to the present case. Even during cross□ examination, the said entries were put to CW□1 and CW□1 deposed that if there was any such quid pro quo arrangement it is not related to the present case and that such bank account transactions were not related to the present case.

14.8.5. It is admitted fact that there is no written agreement of loan. The amount of Rs. 80,00,000/□ is also not a small amount but a huge sum of money. However, the complainant has successfully proved that he transferred an amount of Rs. 80,00,000/□in the account of accused vide Ex. CW□ 1/2 and Ex. CW□1/3 and accused has led contradictory defences and has failed to disprove the burden. In such circumstances, when the credit of loan amount in the account of accused has not been disproved by accused, absence of any loan agreement cannot be a sole ground to acquit the accused.

It is neither mandatory in law to execute a loan agreement if AAKANKSHA

complainant could otherwise prove the lending, nor is there any law under section 138 NI Act to render the transaction null if complainant fails to disclose the loan transaction in his ITR. In this context, Ld. counsel for complainant has relied upon the case of Lekh Raj Sharma v. Yahs Pal Gupta decided on 30.06.2015 wherein Hon'ble High Court of Delhi relied upon the case of Deelip Apte v. Nilesh P. Salgaonkar & anr. 2006 (6) Bom CR 653 to observe that the mere finding that as the amount of loan disbursed to the respondent was not shown in the balance sheet and ITR, the appellant could not be said to have proved its case beyond reasonable doubt, is erroneous. In Mr. Krishna P. Morajkar v. Mr. Joe Ferrao 2013 CRIJ (NOC) 572 decided on 19.07.2013 it was observed that there is no provision on Income Tax Act which makes an amount not shown in income tax returns unrecoverable.

14.8.6. The plea of Ld. counsel for accused that complainant failed to prove any loan agreement and Section 92 Indian Evidence Act excludes all oral evidences, is misplaced in law. What Section 92 Indian Evidence Act enacts is that if there is a written contract and it is proved u/s 91 Evidence Act, then any oral evidence of variation of its terms is not allowed and any variation in its terms should also be by written agreement only. Section 91 Evidence Act admits only documentary evidence in cases where either a written contract has been entered into or if the law mandates execution of a written contract. However, in the present case, there is no AAKANKSHA written agreement nor does the law mandates lending of loan Ct. Case No. 4129/2018 Page 29 of 41 Date: 2023.04.29 by a written contract only. Thus, Section 92 Evidence Act has no application to the facts of the present case. Apart from raising contradictory defences by accused, accused has also failed to examine herself or her husband in evidence to prove her defence. Thus, accused has failed to prove her above defence that she never took any loan of Rs. 80 lacs from complainant.

14.9. The other defence taken by accused is that by no manner a person can agree to pay Rs. 1.25 crore in lieu of Rs. 80 lacs, even if the story of complainant is believed to be true.

Ld. counsel for accused has contended that complainant has failed to prove as to how he calculated interest of Rs. 45 lacs. On the other hand, Ld. counsel for complainant contended that the interest of Rs. 45 lacs was a consolidated interest and no percentage or arithmetical calculation was done in calculating the interest. The question which now arises is whether on the date of presentation of cheque in issue, an amount of Rs. 1.25 crore was outstanding against accused?

14.9.1. It is admitted fact that there is no written agreement of loan and thus there is no written proof of stipulation of interest. The complainant has deposed that due to the relations between him and accused and her husband, he did not execute any written agreement and accused verbally assured to repay the debt. However, complainant has failed to prove that there was any stipulation of interest and if there was, AAKANKSHA the manner of calculating such interest. Accused has

Digitally signed by AAKANKSHA Date: 2023.04.29 16:29:16 +0530 challenged the fact that why would any person agree to give Rs. 1.25 crore in lieu of Rs. 80 lacs. CW□1 has himself admitted that he filled the date on the cheque himself but remaining particulars were filled by accused. A cursory perusal of the cheque in issue would reflect that it has particulars written on it in two different ink, the date and name of payee are filled in one ink and the amount in words and figures are written in another ink. Accused has only admitted her signatures on the cheque and has disputed the handwriting of the remaining particulars. When cross□questioned, CW□1 himself deposed that he does not remember whether accused signed in his presence and whether accused filled the name of payee and amount in words and figures in his presence. Thus, even if the cheque was given in a blank signed manner, as suggested by accused during cross□examination of CW□1, it has to be proved by complainant that on the date of its presentation, the cheque amount was actually outstanding against the accused. But complainant has failed to prove as to how such heavy interest of Rs. 45 lacs was calculated on the principal sum of Rs. 80 lacs and what was the need of accused that she agreed to give more than half of the principal amount as interest to the complainant. Such heavy interest also seems incomprehensible in view of deposition of CW□1 that he and accused shared such an amicable relationship that he believed the verbal assurance of accused to pay Rs. 1.25 crore and he did away with the formality of getting the arrangement in writing. Mere submission of Ld. counsel for complainant that accused has admitted that there was some kind of arrangement, is not sufficient to fasten the liability upon accused to the AAKANKSHA extent of Rs. 1.25 crore.

Ct. Case No. 4129/2018 Page 31 of 41 2023.04.29 14.9.2. Further, no date, month or even the year of handing over the cheque to complainant has surfaced on record. Upon cross□questioning, CW□1 deposed that although he does not remember the date, month or year but the cheque in issue was handed over to him by accused on the same day when he gave second cheque to accused. As per the pleadings and evidence of complainant, the second transfer of Rs. 14 lacs was made to accused on 27.06.2013 through RTGS. Firstly, the deposition of CW□1 that the second transfer was through cheque in incorrect in view of Ex. CW□1/3. Secondly, DW□1/1 is a letter issued by the bank of accused stating that the cheque book from serial number 007481 to 007500 including the cheque in issue was issued on 21.03.2014 in the name of Vagisha Suneja, meaning thereby that the cheque in issue was not even in possession of accused on 27.06.2013 when CW□1 deposes to have received it from accused in discharge of his legal liability. Thus, evidence of CW□1 to the said effect stands defeated. Ld. counsel for accused has rightly argued that complainant is not a lay man to have lent Rs. 80 lacs in exchange of receiving Rs. 1.25 crore orally without any agreement. It is admitted fact that complainant is a retired brigadier and was practising law after his retirement in November 2010. Thus, complainant was well verse with the legal and procedural formalities. But complainant failed to prove that on the date of presentation of cheque in issue, accused owed him Rs. 1.25 crore as against the loan amount of Rs. 80 lacs.

AAKANKSHA Ct. Case No. 4129/2018 Page 32 of 41 Date: 2023.04.29 14.9.3. Ld. counsel for accused has relied upon judgment in the case of Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & anr. Criminal Appeal No. 1497 of 2022 dated 11.10.2022 wherein it has been observed as follows:

"30. In view of the discussion above, we summarize our findings below:

For the commission of an offence under Section 138, the cheque that is dishonored must represent a legally enforceable debt on the date of maturity or presentation;

If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would to be the sum represented on the cheque;

When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the [NI] Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonored when it is sought to be encashed upon maturity, then the offence under section 138 will stand attracted..."

In the present case also, since complainant has failed to prove that the cheque in question represented legally enforceable debt on the date of its presentation, it can be safely held that the AAKANKSHA cheque was presented for more than the liability of accused as Ct. Case No. 4129/2018 Page 33 of 41 Date:

on date of its presentation.

14.10. Now referring to the cases relied upon by the parties. Ld. counsel for accused relied upon the following cases: The cases of Ircon International Ltd. v. Union of India 2003 (108) DLT 656, Mahila Vinod Kumari v. State of MP (2008) 8SCC 34 and C.S. Aggarwal v. State 2019 (259) DLT 113 have been relied upon by accused in favour of his application u/s 340 Cr.P.C. which is pending adjudication and shall be adjudicated separately. In the case of Reverend Mother Marykutty v. Reni C. Kottaram & Anr. (2013) 1 SCC 327 it was held by Hon'ble Supreme Court that the fact that the cheque was not in handwriting of accused strengthened the defence that it was not issued in favour of complainant and there was no reliable evidence adduced by complainant to prove that Rs. 25 lacs were due to him warranting execution of cheque. However, in the case at hand, complainant has filed his statement of account and receiving of Rs. 80 lacs through banking mode has been admitted by accused. However, complainant has failed to prove that Rs. 1.25 crore as against Rs. 80 lacs were due to him on the date of presentation of cheque. The case of Paresh Rastogi v. State of UP 2018 SCC OnLine SC 1786 is not relevant to the present case as in that case some amount was already paid by accused and the proceedings were quashed and the case law filed does not show the full scenario of facts and observations made, it is a brief judgement. The case of Anil Aggarwal v. State decided on AAKANKSHA 12.08.2015 does not lend any credence to the defence of Ct. Case No. 4129/2018 Page 34 of 41 Date: 2023.04.29 accused in as much as Hon'ble High Court of Delhi in the above case although relied upon the fact that the loan was not reflected in ITR, but

that was not the sole criteria to have acquitted the accused, in fact the complainant was unable to prove the lending and non-disclosure of loan in ITR came as a further ground to doubt the testimony of complainant witnesses. However, in the present case when the lending is fortified by bank account statement, mere fact that the loan was not disclosed in ITR is not sufficient to pass an order of acquittal. The case of Devender Kumar v. Khem Chand Crl.

Rev. P 679/2012 also does not aid the accused in his defence in as much as non-mentioning of loan in ITR was again not the only factor to acquit the accused, but it was held by Hon'ble High Court of Delhi that despite the fact that there was an agreement of loan but there was no proof of the amount of loan being paid to accused and thus the execution of promissory note as mentioned in the agreement loses its efficacy.

14.11. The following are the cases relied upon by Ld. counsel for complainant: In Lekhraj Sharma v. Yashpal Gupta decided on 30.06.2015, Hon'ble High Court of Delhi convicted the accused observing inter alia that mere non-disclosure of loan in ITR does not make the loan amount non recoverable, but one of the factor was also that the accused and his witness failed to place on record proof of payment of loan despite having deposed that a receipt was in their possession. However, the facts of the present case are a bit different to the above case in as much as although the fact of lending loan has been AAKANKSHA proved, the amount of interest has not been proved and the Ct. Case No. 4129/2018 Page 35 of 41 2023.04.29 complainant has failed to prove the outstanding liability of accused to the tune of cheque amount on the date of its presentation. In Bir Singh v. Mukesh Kumar Cri. App. No. 230-231 of 2019 decided on 06.02.2019 it has been held by Hon'ble Supreme Court that Section 139 NI Act mandates that unless contrary is proved, it is to be presumed 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, such presumption being rebuttable, however the onus of proving that the cheque was not in discharge of any debt or other liability is on the accused drawer of the cheque. The above principle has been applied in the instant case as well as can be seen from paras hereinabove. However, in the present case it has not been proved that the accused had an outstanding balance of Rs. 1.25 crore on the date of presentation of cheque. In the case of K.N. Beena v. Muniyappan & ors. MANU/SC/0661/2001, it was held by Hon'ble Supreme Court that the burden of proving that a cheque has not been issued for a debt or liability is on accused. The case of Oriental Bank of Commerce v. Probodh Kumar Tewari Crl. Appeal No. 1260 of 2022 decided on 16.08.2022 is related to having opinion of handwriting expert and it was observed that a drawer who signs a cheque and hands it over to the payee is presumed to be unless drawer adduces evidence to rebut the presumption that the cheque has been issued for payment of a debt or in discharge of a liability. However, in the present case accused has adduced evidence in the form of Ex. DW-1/1 to prove that the cheque did not even exist on the date on which complainant AAKANKSHA deposed it to have been issued to him.

Ct. Case No. 4129/2018 Page 36 of 41 Date:

14.12. Thus, accused has been able to successfully rebut the presumption of law and discharge the burden of proof by raising a probable defence that the cheque in question was not issued in

discharge of his liability as the cheque was presented in excess of his liability as on the date of its presentation.

The first legal requirement is, thus, proved in favour of accused and against the complainant.

15. The second legal requirement is:

> "That 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."

The cheque in question Ex. CW□1/4 is dated 06.12.2017. The cheque returning memo Ex. CW□1/5 is dated 08.12.2017 which proves that the cheque in question was presented within the period of its validity. Further, defence has failed to controvert the said fact.

Thus, the second legal requirement is adjudicated in favour of complainant.

16. The third legal requirement is:

> AAKANKSHA "That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of Digitally signed by AAKANKSHA Date:
>
> 2023.04.29 Ct. Case No. 4129/2018 Page 37 of 41 16:30:18 +0530 the 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 the bank."
>
> Section 146 NI Act presumes the fact of dishonour of cheque upon production of bank's slip or memo having the official mark denoting that the cheque in question has been dishonoured. This is also a rebuttable presumption and the upon production of such bank memo, the burden shifts upon accused to disprove the same.
>
> It was held in Laxmi Dyechem v. State of Gujarat: (2012) 13 SCC 375 that:
>
> "15. ... We find ourselves in respectful agreement with the decision in NEPC Micon Ltd. (supra) that the expression "amount of money ..... is insufficient"

appearing in Section 138 of the Act [NI ACT] is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act."

AAKANKSHA In the instant case, a presumption has been raised in favour of complainant by virtue of Section 146 NI Act that the cheques in question were dishonored for the reason stated therein viz. drawer signature differs. As held in Laxmi Dyechem (supra) dishonour of cheque with the remarks "drawer signature differs" also fall within the offence u/s 138 NI Act and therefore, the burden now shifts upon the accused to rebut this presumption by establishing some reasonable justification for the same. But the accused has admitted her signature on the cheque in question.

Thus, the third legal requirement is adjudicated in favour of complainant.

17. The fourth legal requirement is:

> "The payee or the holder in due course of the cheque 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."

In the instant case, the cheque in issue was returned dishonored on 08.12.2017. The complainant sent a legal notice dated 22.12.2017 (Ex.CW□1/6) addressed to the accused. Speed post receipt dated 22.12.2017 is Ex. CW□1/7. Speed post tracking report is Ex. CW□1/8 which discloses the date of delivery upon accused as 23.12.2017. Thus, it is proved that the AAKANKSHA legal notice was sent to accused within thirty days of receipt of information of dishonour of cheque in issue.

The fourth legal requirement is, thus, adjudicated in favour of complainant.

18. The fifth legal requirement is:

> "The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice."

The accused has admitted receiving of legal notice. Accused has also sent a reply to the legal notice which is Ex. CW□1/9. However, it is an undisputed fact and also a matter of record that the accused has failed to make the payment till date let alone making payment within 15 days of receipt of notice. The defence taken by accused for not making the payment within the statutory period of 15 days has been that she has no such liability to pay the complainant.

Thus, the fifth legal requirement is adjudicated in favour of complainant.

19. All the legal requirements constituting an offence u/s 138 NI Act being cumulative in nature, the fact that the first legal requirement has not been proved in favour of complainant, the ingredients necessary to bring home the guilt AAKANKSHA of accused remain incomplete. Accordingly, accused Vagisha Ct. Case No. 4129/2018 Page 40 of 41 Date:

> Suneja is acquitted for the alleged offence u/s 138 NI Act.

20. Bonds under Section 437□A Cr.P.C. are accepted for a period of six months from today.

Digitally Announced in the open signed by AAKANKSHA court on 29.04.2023 AAKANKSHA Date:

2023.04.29 16:31:03 +0530 (Aakanksha) Metropolitan Magistrate(NI Act)□07 South West District, Dwarka Courts, New Delhi