

## Smt. Uma Devi vs State (Govt. Of Nct Of Delhi) on 26 September, 2017

IN THE COURT OF SH. SUNIL K. AGGARWAL, ADDL. SESSIONS JUDGE-  
04, NORTH-WEST DISTRICT, ROHINI COURTS, DELHI

CRN No. DLNW01-  
Crl. A

Smt. Uma Devi,  
W/o Sh. Surender Kumar,  
R/o H. No. 925, 3rd Floor,  
Village Pooth Kalan Extension, Gram Shabha,  
Delhi.

Versus

1. State (Govt. of NCT of Delhi)
2. Rajesh Gupta,  
S/o Sh. Ramesh Chand Gupta,  
R/o A-1151, Utsav Vihar,  
Karala, Delhi.

Appeal presented on 29.04.2017 J U D G M E N T:□

1. This appeal under Sec. 374 Cr.PC takes exception to the judgment dated 15.03.2017, whereby the appellant was convicted by Ld. Metropolitan Magistrate□ (North□ West), Rohini Courts, Delhi in complaint case no. 12116/16 under Sec. 138 of The Negotiable Instruments Act and order dated 21.03.2017, whereby she was awarded simple imprisonment for a period of six months and fine of Rs. 8 lacs, failing payment whereof, she is to further undergo simple imprisonment for a period of three months.

2. The relevant facts of case in brief, are that respondent no. 2/complainant had filed a complaint case under Sec. 138/142 of the Negotiable Instruments Act on 13.12.2014 claiming that his friendship with husband of the appellant/accused had matured into family relation of which the appellant took advantage and approached him for a loan of Rs. 6,00,000/□citing urgency for investing in some business. Although, she was prepared to pay handsome interest on such loan yet the complainant in order to help her extended loan of a sum of Rs. 6,00,000/□ on 10.02.2014 without interest, which was returnable within 7□8 months. At the time of giving loan, the appellant had executed a loan agreement, pro□note and a post dated cheque of 31.10.2014 of the loan amount favouring respondent no. 2/complainant, in order that she discharges her liability. When, however, the cheque was presented for encashment on/after its due dates, it was returned with remarks 'insufficient funds' by the bank vide memo dated 14.11.2014. The complainant had telephonically requested the appellant for repayment of loan but she ignored him, reflecting that she had taken money with dishonest intention by

defrauding the complainant. A legal notice dated 20.11.2014 was therefore sent to the appellant through Registered Post, which returned undelivered with report 'left'. The appellant had intentionally avoided the service of notice as she is residing at the very address mentioned in the notice and the complainant had met her and her husband on 10.12.2014 and obtained electricity bill of their premises.

3. After preliminary evidence, the appellant was summoned vide order dated 16.12.2014. On her appearance, notice under Sec. 251 Cr.PC was served on her on 24.04.2015. While pleading not guilty and seeking trial, she had admitted her signatures on the subject cheque Ex.CW 1/3 with explanation that it was not filled by her. She claimed to have taken loan of Rs. 50,000/- from the complainant, repayable in monthly installments and has paid a total sum of Rs. 70,000/- including interest and principal by then. She had alleged that the complainant misused the blank signed cheque taken from her and that she is left with no liability towards him. The receipt of legal notice on behalf of complainant was denied by her. The complainant has examined only himself as CW 1 and closed his evidence on 20.02.2016. In statement under Sec. 313/281 Cr.PC, the appellant had denied having taken a loan of Rs. 6,00,000/- from the complainant. The subject cheque was given to the complainant after putting her signatures by way of security of having taken a loan of Rs.50,000/- from him. The complainant had obtained her signatures on some typed and blank papers of which she had not gone through the contents. While admitting that she is residing at the address mentioned in the electricity bill Ex. CW 1/A and that she had received the legal notice on behalf of the complainant, the appellant had claimed to be falsely implicated in this case as a sum of Rs. 30,000/- was returned by her to the complainant, after receiving legal notice. Although she had opted for leading evidence in defence, yet no witness was produced in the court, therefore, her opportunity was closed by the trial court on 19.12.2016. After hearing the parties, the impugned judgment and order on sentence were passed.

4. The appellant was admitted to bail till 30.03.2017, on an application moved under Sec. 389 Cr.PC on 21.03.2017. She however did not turn up on 30.03.2017 compelling the court to issue coercive process against her. The same process was again issued on 13.04.2017. The appellant had filed an application for cancellation of warrants issued against her, on 21.04.2017 but that was dismissed and she was taken into custody for undergoing awarded sentence.

5. The present appeal has been filed on the ground of the impugned judgment and order being against facts/evidence and law and without noticing material contradictions in the statement of 'prosecution' witness. Further the 'prosecution' failed to connect the appellant with the alleged transaction and thereby to prove the case set up by it. Despite the appellant having right to remain silent, the trial court had put the burden of proof on the defence. The entire incriminating evidence was not put to the appellant as is mandatorily required. The case also suffered from concealment of material facts and evidence, which the court failed to appreciate. The trial court also did not

consider the age, antecedents and gender of appellant for denying her the benefit of Sec. 360 Cr.PC. It has therefore been urged that the impugned judgment and order on sentence be set aside.

6. At the stage of trial of the case the matter was referred for Mediation but the parties somehow could not resolve it.

7. Along with the appeal, an application under Sec. 5 of the Limitation Act for condonation of eight days delay in filing of appeal has been filed. It has been stated that the copy of orders were supplied to her on 21.04.2017, when she was taken into custody, after dismissal of her application for cancellation of warrants, as a result whereof, she could not get the appeal prepared and filed in court within prescribed limitation. It has been contended that the appellant will suffer irreparable loss and injury in case her application was not allowed.

8. No reply to the application has been filed by the respondent/complainant. Arguments heard. It has not been disputed by Ld. Counsel for respondent no. 2/complainant that the appellant/convict was supplied the copies of impugned orders on 21.04.2017 by Ld. Trial Court, when she was taken into custody for undergoing awarded sentence. Although none of the five paras of condonation application indicate an iota of reason for the delay in filing the appeal beyond prescribed period of 30 days, yet as has been argued one can perceive the difficulty that the appellant may have faced in imparting instructions to her counsel for drafting the appeal and that may genuinely and primarily be the reason for paltry delay. The respondent has also not made it a major bone of contention. As the settled proposition of law on the subject stands that the court needs to be generous in condoning delays on plausible grounds put before it as against resorting to technicalities. Moreover, the court should not shut its door at the face of a gullible litigant suffering incarceration and declined to hear an appeal for minor delay in filing it. The facts and circumstances of the case, therefore, reflect that the appellant has been able to show good ground for the delay of eight days in filing the present appeal. Her application, therefore, is allowed and the delay is condoned.

9. I have heard Sh. Ram Nath Singh Kushwaha, Advocate, Ld. Counsel for the appellant, Sh. Murari Lal Sharma, Advocate, Ld. Counsel for respondent/complainant and carefully perused the judicial record. Both the Ld. Counsels have made submissions in consonance with appeal and impugned judgment. It can legitimately be observed at the outset that there are vital deficiencies in the claim put forth by the respondent/complainant on the one hand and shifting stands qua the liability in respect of cheque Ex. CW-3 of the appellant on the other. The loan agreement, Ex. CW-1 and pronote, Ex. CW-2 were not really required to be produced in a case filed under Sec. 138 of Negotiable Instruments Act but since they have been produced, their limitations came to be noticed. The loan agreement dated 10.02.2014 bears no stamp duty and contain blanks. It has not been signed by the creditor and obviously is not an attested document. The date and name & particulars of

creditor/lender has been filled in it in a different ink. The probability of obtaining the signatures of appellant on its three pages without filling up the details of creditor is writ large in the facts of the case and the same appears to have been interpolated subsequently.

The pronote Ex. CW□/2 does not bear the requisite stamp duty. The signatures of appellant appearing at the bottom of document by leaving a large blank space in between reflects that the document was not signed from her without disclosing and even realizing the efficacy of document.

10. Both the complaint and the affidavit filed by respondent/complainant on the record of Ld. Trial Court are silent about the accrual of cause of action for filing the complaint. There is no assertion that the appellant had failed to comply with the demand in notice or in making the payment within the stipulated time, which provided foothold to the complainant to launch her prosecution by filing criminal complaint.

11. The appellant on her part reflected goof□ups practically at every stage of the case. In response to the accusation put to her under Sec. 251 Cr.PC on 24.04.2015, she had admitted her signature on the cheque but denied that other details had also been filled up. She had also denied the receipt of legal notice directed on behalf of the complainant. According to her loan of Rs. 50,000/□ had been taken from the complainant and a total of about Rs. 70,000/□including interest has been repaid in installments and therefore no liability remained. In her application under Sec. 145(2) of the Negotiable Instruments Act filed before Ld. Trial Court on 28.10.2015, she had denied any liability towards the complainant while asserting that he had her blank cheque without any amount or signatures on it and that the same has been misused by him. She had chosen not to reveal as to when and for what purpose the cheque Ex. CW□/3 was given or had reached the complainant. Despite once admitting her signatures on Cheque Ex. CW□/3, it was suggested to the complainant/CW□ in cross□ examination that the cheque does not bear her signature ! Further in her statement under Sec. 313/281 Cr.PC, the appellant categorically admitted having issued security cheque to the complainant against loan of Rs. 50,000/□ She also stated that the complainant had got various other typed and blank papers signed from her. It was further stated by her that the legal notice on behalf of the complainant was received whereafter she had paid a sum of Rs. 30,000/□to him in cash after about 10□12 days. She had also admitted the correctness of her address on the electricity bill, Ex. CW□/8.

12. The contention of appellant that she had right to remain silent and therefore the court could not have relied upon her assertions and should have instead analyzed whether the complainant could make out his projected case on his own, loses cite of the fact that the burden of proof on the complainant in the cases of present nature involving monetary liability cannot be as fastidious as in the case of Penal offences. The clear and unambiguous admissions of the opposite party arrayed as an accused greatly relieve the complainant from the responsibility of proving the same to the hilt. To take the benefit of contended proposition, the appellant was required to refrain from shifting/loosening her defence practically at every step of the case.

13. As it stands, the complainant was able to logically prove that the cheque Ex. CW 1/3 had been issued by the appellant, that it was presented to the bank within the period of its validity, that it got dishonored on being presented for encashment, that the complainant got a demand notice, Ex. CW 1/5 issued to the appellant within 30 days of receiving information about the return of cheque as unpaid and that the drawer of cheque failed to make payment within 15 days of receipt of such notice. It takes into account that the address of appellant on her electricity bill Ex. CW 1/8 is identical to the address mentioned in legal notice sent through Speed Post, Ex. PW 1/7.

14. The only question of cheque having been issued in discharge of legal debt or liability and to what extent remains to be examined.

15. In his cross-examination, complainant/CW has admitted that cheque Ex. CW/C was filled up by him. The complaint is silent about the period of acquaintance of complainant growing into intimacy with the husband of appellant and further concretized into family relation. There is no history of either the husband of the appellant or the appellant having borrowed amounts from the complainant. The complainant has further deposed that only the parties to the state and witness Sanjeev, who has not been examined, were present at his house at the time of transaction. It is mysterious and indigestible that the complainant extended loan of huge amount of Rs. 6 lacs, as visualized from the economic background of appellant, without having experience of money transaction with her, without insisting on the presence of her husband. The complainant has been disclosed the source from where he had arranged the cash amount for being paid to the appellant. Quite candidly, he has admitted that he is an Income Tax payee but the loan amount has not been notified to the Income Tax Authority in his annual returns. One would endeavour to satisfy himself about the substance in the purpose put forth for generating loan by a borrower. The appellant is claimed to have demanded the loan of Rs. 6 lacs for investing in business. He has not disclosed whether she was to commence a new business or wanted to augment her existing business/commercial venture. The complainant has not even identified the nature and place of her alleged business. As a prudent creditor, he must have examined the prospects of the appellant making sufficient profit out of her venture to be able to refund the gratuitous loan being without the burden of interest, within the agreed period. The complainant having family relation with the appellant must have verified whether the loan amount was actually utilized for the stated purpose. No inkling has been rendered by the complainant on any of these points leaving the court to guess that the appellant had no need or urgency for loan of Rs. 6 lacs nor had the potential of refunding the same within a matter of 7-8 months. At least the complainant/creditor has not ascertained/evaluated her such requirement. It is quite surprising while assessing this case that the complainant chose to forgo the interest on the loan given to the appellant although, he made it sure that she executes multiple documents in this behalf. The story of the complainant having extended loan to the extent of Rs. 6 lacs to the appellant is found to be unpalatable and exaggerated. The figure of Rs. 6 lacs as such is held to have been unauthorizedly filled up by the

complainant in cheque Ex. CW 1/3 and of course the accompanying documents termed as loan agreement and pronote without backing of equivalent consideration.

16. The appellant nevertheless has admitted having taken loan of Rs. 50,000/□ from the respondent/complainant. She has been waivering about the refund thereof. Initially she claimed to have paid a total amount of Rs. 70,000/□ to the complainant in installments in response to notice under Sec. 251 Cr.PC and finally claimed to have refunded Rs. 30,000/□ to him after 10□12 days of receiving legal notice. She however has produced not a single document reflecting the payment of any amount to the complainant by producing receipt/s. No date or place of payment has been specified. Despite offering to lead evidence in defence, she remained indolent. It would be unacceptable that she had paid the amounts without obtaining receipt/written acceptance from the complainant as she could not have been oblivious of the legal consequences. One is expected to be vigilant at least to the extent that if he has been asked to execute documents at the time of giving loan, he/she must insist on written acknowledgment at the time of full/part refund thereof. If her version that no liability towards the complainant enures on her were true, there is no explanation for not demanding the return of documents executed at the time of grant of loan or ensuring their destruction.

17. It can be legitimately culled from above discussion that the appellant owed liability of Rs. 50,000/□ towards the respondent/complainant and probably on failure to obtain the refund, the latter filled up the security cheque Ex. CW 1/3 for an exaggerated amount and initiated these proceedings on its remaining unpaid, for obvious reasons. It is therefore held that the cheque Ex. CW□1/3 had not been issued by the appellant in discharge of the liability to the extent of amount mentioned there. The claim of complainant, thus, is found to be beyond proved parameters. The appeal, therefore, is allowed and the impugned judgment dated 15.03.2017 and order on sentence dated 21.03.2017 are set□aside, resultantly the appellant is acquitted in the case. The appellant be released from jail, if not required to be detained in any other case.

Trial Court Record be released with an attested copy of this order. Appeal file be consigned to Record Room.

Announced in the Open Court  
on 26.09.2017

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