

## Cc Ni Act. 529/2020 Nationwide ... vs . Rajive Gogna Page No. 1 on 22 July, 2022

CC NI Act. 529/2020 Nationwide immigrations serv. vs. Rajive Gogna Page No. 1

IN THE COURT OF MS. AISHWARYA SHARMA,  
METROPOLITAN MAGISTRATE (NI ACT) DIGITAL COURT-02,  
SOUTH-EAST DISTRICT, SAKET COURT COMPLEX, NEW DELHI  
Criminal Complaint No: CC NI ACT529/2020  
M/s NATIONWIDE IMMIGRATION SERV.

... Complainant

Versus

RAJIVE GOGNA

... Accused

1. Name & address of the complainant:

M/S Nationwide Immigration  
Services through it's Proprietor  
Sh. Rajeev Arora, having office at  
908-912 Lodhi Tower, Nehru  
Place, New Delhi-110019.

2. Name & address of the accused :

Sh. Rajive Gogna  
S/o Sh. Sukhdev Kr. Gogna  
R/O H No. 5 First Floor,  
Kewal Park, Near Ram Mandir  
Adarsh Nagar, Delhi-110033  
And also at D-132, East of Kailash  
New Delhi 110065

3. Offence complained of :

U/S 138 of The Negotiable  
Instruments Act, 1881.

4. Plea of accused :

Pleaded not guilty.

5. Final Arguments :

18.07.2022.

6. Date of Institution of case :

16.12.2020

7. Date of decision of the case :

22.07.2022

### JUDGEMENT

1. Vide this judgment, I shall dispose of the aforementioned complaint case filed by the complainant M/s Nationwide Immigration Services through it's proprietor Sh. Rajeev Arora (hereinafter referred to as the 'complainant') against Sh. Rajive Gogna (hereinafter referred to as the 'accused').

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2. Factual Matrix: The complainant's case is that the complainant is a sole proprietorship concern and Mr. Rajeev Arora is it's sole proprietor. It is stated that the complainant provides immigration consultancy services to it's clients. It is further stated that the accused approached the complainant seeking employment for the post of Business head and the accused was appointed on agreed monthly salary of Rs.1,50,000/□vide employment agreement dated 15.06.2020. It is submitted that

the services of the accused were not as good as portrayed by him at the time of his interview. However, the complainant imparted him proper training and invested lot of resources in his training, however, the accused resigned from the services of complainant on 25.07.2020 without serving the mandatory contractual period of 24 months and notice of 45 days in breach of clause 8 of the employment agreement and acting on the said clause in discharge of his liability, the accused at the time of his resignation issued a cheque bearing No. 000034 dated 18.07.2020 for a sum of Rs. 4,50,000/- drawn on Kotak Mahindra Bank, Ground Floor, Shop No. B-1, Deenar Bhawan, 44 Nehru Place, New Delhi (herein after referred to as the 'cheque in question'), in favour of complainant and when the said cheque was presented by the complainant, the same was dishonoured for the reason "Payment stopped by drawer"

vide return memo dated 07.10.2020. Thereafter, the complainant issued legal demand notice dated 04.11.2020 by registered post at the correct address of the accused i.e. D-32, East of Kailash New Delhi 110065 as provided by him in his employment agreement, however, the same has been received back with remarks "no such person in the address". It is further stated that the notice was also sent at the other address of the accused i.e. H No. 5 First Floor, Kewal Park, Near Ram Mandir, Adarsh Nagar, Delhi-110033 through registered post and the same has not returned back, as such, the same is deemed to be served upon the accused. It is further stated that the legal demand notice has also been served upon the accused through e mail dated 04.11.2020, requiring him to make the payment of cheque amount within 15 days of the receipt of the notice. However, the accused did not come forward to repay this amount within the prescribed period. Hence, being aggrieved, the complainant filed the present complaint under section 138 of The Negotiable Instruments Act, 1881 on 16.12.2020 and prayed that the accused be tried and punished under section 138 of The Negotiable Instruments Act, 1881 and he be also directed to pay compensation to the complainant U/S 357 of Cr. P.C.

3. Summoning of accused: This court summoned the accused after hearing the arguments at the stage of pre-arrest summoning vide order dated 01.03.2021 and the accused entered appearance in the present case on 26.08.2021 and he was admitted to bail vide same order.

4. Notice: The court has framed notice of accusation under Section 251 Cr.P.C. against the accused on 17.11.2021. The substance of accusation was read over and explained to the accused and after being satisfied that the accused comprehended the same, the court recorded his plea. The accused pleaded not guilty and claimed trial. The accused admitted his signatures on the cheque in question. The accused has also admitted that the legal demand notice was sent at his correct address, however, he claimed that he did not receive the legal demand notice from the complainant. In his defence, the accused stated that he worked with the complainant company for 1 month and 19 days and he gave the cheque in question at the time of joining the complainant company to open a bank account to draw his salary. He further stated that Mr. Rajeev Arora was demanding details of clients of his previous organization, but he refused to provide the same due to confidentiality agreement with his previous organization and due to this reason only, he was constrained to resign from the

complainant company and this fact is also mentioned in his resignation letter. He further claimed that he demanded return of his cheque, however, Mr. Rajeev Arora did not return the same and misused the same. On the same day, the statement of accused U/S 294 Cr. P.C regarding admission/denial of AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:09:25 +0530 documents was also recorded wherein he admitted the correctness of dishonor memo.

5. Evidence on behalf of complainant: To prove his case prima facie, the complainant has examined himself as CW□ and has filed his evidence under Section 200 of the Cr.P.C. by way of an affidavit which is Ex. CW□/1 wherein the complainant has averred the same facts as are averred in the complaint. To prove the above claims, the complainant has also filed, Ex. CW1/A employment agreement dated 15.06.2020, Ex. CW1/B original Cheque in question dated 18.07.2020, Ex. CW1/C original Return Memo dated 07.10.2020, Ex. CW1/D the legal demand notice dated 04.11.2020 along with it's postal receipts Ex. CW1/E and tracking report Ex. CW1/F (Colly) and copy of e mail dated 04.11.2020 qua service of legal demand notice upon the accused which is Mark CW1/G. Thereafter, CW□ was subjected to cross examination by Ld. Counsel for accused.

6. During his Cross examination CW□ stated that he does not remember the exact date of joining of the accused and further stated that the same is mentioned in the documents which are already part of record. He submitted that on 25.07.2020, he had last conversation with the accused through e mail, though the accused has already resigned from services on 18.07.2020. He has admitted that he has not placed on record any document to show that the accused has resigned from the service on 18.07.2020. With respect to the date of resignation, he was successfully confronted and contradicted with para No.6 of his complaint, wherein he has mentioned that the accused has resigned from his services on 25.07.2020. He further stated that this case has been filed in the name of Proprietorship Concern through it's proprietor and he is the sole proprietor and he can produce the GST certificate for the same. He stated that the accused joined his service on 15.06.2020 and resigned on 18.07.2020 and he gave training to accused for 15□20 days, though he does not have any proof of the same. He denied the suggestion that one Ms. Jyoti Jha obtained the cheque in question from the accused 2□3 days after joining the organization. CW□ was AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:09:29 +0530 successfully confronted and contradicted regarding e mail communication Mark A dated 19.07.2020 between the parties, as per which the accused resigned from the services of the complainant firm on 19.07.2020 and in explanation for the same, CW□1 stated that the accused verbally resigned on 18.07.2020 and he sent written communication for the same on 19.07.2020. CW□ was also asked whether he had whatsapp conversation with the accused as mentioned in Mark B (colly) to which he answered in affirmative. In this whatsapp conversation, the accused has demanded return of the cheque in question from the complainant on 27.07.2020, 28.07.2020 and 29.07.2020, however, complainant refused to return the same claiming that the same is property of complainant firm. CW□ was also asked if he has signed as director of his Private Company on employment agreement Ex.CW1/A and in response to the same, he stated that he has signed the employment agreement being owner of proprietorship concern. He denied the suggestion that the date on cheque i.e 18.07.2020 is prior in time to the date of resignation. He also denied the suggestion that the complainant firm has misused the cheque in question. Thereafter, CE was closed vide separate statement of CW□.

7. Examination of the accused under section 313 Cr.P.C.: The accused was examined under section 313 Cr.P.C. on 20.05.2022, wherein, the accused admitted that he has executed employment agreement dated 15.06.2020 i.e. EX. CW1/A with the complainant firm for agreed monthly salary of Rs. 1,50,000/□ however, he stated that as per their agreement, his salary was supposed to increase to Rs. 2 Lakh per month after completion of 3 months. With respect to the date of resignation, he stated that he did not resign on 25.07.2020 but on 19.07.2020 which is prior to serving the mandatory period of 24 months, however, he stated that he was constrained to resign as the complainant was asking him about the details of the clients of his previous organization, which was illegal. He stated that he had handed over the cheque in question within one week of his joining for the purpose of AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:09:34 +0530 disbursement of his salary to one Ms. Jyoti Jha who was working as account assistant in the complainant firm. He admitted that the cheque in question was dishonoured vide return memo dated 07.10.2020 Ex. CW1/C with remarks "payment stopped by drawer". He admitted his signatures on the cheque in question, however, denied filling particulars of the same. He admitted knowing the complainant and joining the services of the complainant on 15.06.2020, however, claimed that the complainant has filed this false case when he refused to disclose the details of clients of his previous organization and account details of his previous employer. He claimed that he has not received the legal demand notice. The accused stated that he intends to lead defence evidence, however, on the date fixed for DE, no one appeared on behalf of accused and as such the opportunity to lead DE was closed vide order dated 25.05.2022.

8. Final Arguments: Ld. Counsel for the complainant argued that the complainant has proved his case as it is proved that the accused entered into the employment agreement dated 15.06.2020 and he resigned from the services of the complainant on 19.07.2020, which is much prior to the mandatory period of 24 months, in violation of clause 8 of his employment agreement and thus, it is established that the accused had issued the cheque in question to discharge his legal liability for payment equivalent to his 3 months salary as per clause 8 of his employment agreement. It has also been proved that the cheque was dishonoured. Service of legal notice is also to be presumed as the legal demand notice was sent at the last known correct address of the accused. The accused was liable to make the payment, however, he did not make the payment within stipulated time despite service of legal notice. It is also proved that all the steps were taken by the complainant within the time provided by the law. The accused has failed to rebut the presumption provided in the law. Hence, the accused may be convicted for the offence punishable under Section 138, NI Act. Ld. Counsel for the complainant has AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:09:41 +0530 also filed written arguments. The same is pursued.

9. Per contra, Ld. Counsel for the accused argued that the accused had not given the cheque in question in discharge of any liability but for disbursal of his salary. He further stated that the complainant has no capacity to pursue this complaint as the employment agreement was executed by Sh. Rajeev Arora being director of his Private Ltd. Company, whereas this complaint has been filed by him being proprietor on behalf of his proprietorship concern. He further argued that there is nothing on record to establish that the accused had resigned from the services of the complainant firm on 18.07.2020 i.e. on the date of drawal of cheque, thus, it cannot be said that the cheque in question has been issued in discharge of some existing liability. Hence, the accused cannot be

convicted for the offence punishable under Section 138 N I Act. With these submissions, Ld. Counsel for accused has prayed that he may be acquitted. Written arguments file on behalf of the accused also perused.

10. I have heard the rival submissions of the Ld. Counsels of the parties and perused the material available on record.

11. Appreciation of evidence and finding: Coming to the merits of the case, I first deem it pertinent to enunciate the law relating to dishonour of cheque.

12. To bring home the liability under section 138 of The Negotiable Instruments Act, 1881, following elements must spring out from the averments in the complaint and the evidence adduced by the complainant, viz,

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

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

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c) That cheque has been 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;

d) The payee or the holder in due course of the cheque has made a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

e) 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.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

13. Thus, for securing conviction under section 138 of NIA following points are required to be proved:

a) The cheque was issued by the drawer in discharge of any debt or other liability.

- b) It must be legally enforceable debt or liability.
- c) The cheque must be presented by payee within period of 3 months or it's validity, whichever is earlier.
- d) The cheque is dishonoured because of insufficient funds or it exceeds the arrangement.
- e) A legal notice in writing demanding the payment of cheque is issued

within 30 days of the receipt of information from the bank.

f) There is default by the drawer to make the payment within 15 days from the date of the receipt of notice.

- g) The complaint is filed within 30 days from the date of cause of

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action.

Being cumulative, it goes without saying that it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

14. The law as laid down in relation to the Negotiable Instruments Act is discussed in various judgments. It is settled position of law that there is a presumption in favour of the complainant and against the accused. However, the presumption is rebuttable. Hon'ble Supreme Court of India in Rangappa v. Sri Mohan (2010) 11 SCC 441 has discussed the law in detail. The Hon'ble Supreme Court has held as under:

"15. 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. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:09:59 +0530 transactions. In such a scenario, the test of

proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden.

Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

15. Thus, it has been settled that there is a presumption in favour of the complainant and against the accused, that the cheque was issued for consideration. However, the presumption is rebuttable. The accused can prove that the cheque was not issued for consideration and that the accused did not have any liability to pay the amount. It has also been held that the accused need not lead evidence in support of his defence. He can prove it on the balance of probabilities by showing the contradictions in the material produced by the complainant.

16. Since criminal liability can be attached by proving each element of the Section under which liability is sought to be enforced, I shall now go on to appreciate the evidence□documentary and oral, in light of how compellingly it satisfies each of such ingredient, if at all. In the present case, the accused has admitted his signatures on the cheque in question. It is also admitted that the cheque is drawn on the account of the complainant. It is also not in dispute that the cheque has been presented by payee within period of 3 months. Further, it is also an admitted fact that accused has not made payment of the cheque amount and this complaint is filed within limitation.

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It is also proved that the cheque was presented for encashment and that the same was dishonored with remarks "payment stopped by drawer", as the correctness of the dishonour memo has not been disputed by the accused throughout the trial and rather, he has admitted this fact during statement U/S 313 Cr.P.C and during his statement of admission and denial recorded U/S 294 CrPC. Further, Section 146 of The Negotiable Instruments Act, 1881, in this regard also comes into play which raises a presumption that the court shall presume the fact of dishonour of the cheque in case the cheque is returned vide a return memo having thereon the official mark denoting that the cheque has been dishonoured. Such bank slip or memo is a prima facie proof of dishonor. In view of such presumption and keeping in view the fact that the accused has not led any evidence to prove the contrary, it is established that the cheque in question was dishonoured due to payment stopped by drawer instructions.

17. The accused has denied the service of legal notice. It has been argued that the complaint is not maintainable as the legal notice was not served upon the accused. I have considered the submissions. However, there are no merits in it. The complainant has filed the copy of legal notice and postal receipt along with tracking report. Perusal of the same reveals that the legal demand notice dt. 04.11.2020 was sent at the correct address of the accused i.e. H No. 5 First Floor, Kewal Park, Near Ram Mandir, Adarsh Nagar, Delhi-110033 through speed post and its delivery location is shown as N S Mandi, SO and the Legal demand Notice was also sent at the other address of the accused D-32, East of Kailash New Delhi 110065, it was received back with remarks 'no such person in the given address'. Further, the legal demand notice is also sent through e mail on the e mail ID of the accused which has been provided by him in his employment agreement. During his statement U/S 251 Cr.P. C, the accused has also admitted that the legal demand notice was sent at his correct address. The same address is also mentioned in his employment agreement AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:10:16 +0530 Ex. CW1/A. Thus, service of legal demand notice is deemed to be presumed as per Section 27 of the General Clauses Act. On this point, it is relevant to refer to the decision of Hon'ble Supreme Court in Raja Kumari v. Subbarama Naidu, 2004 (3) KLT 799 (SC). In this case, while referring to Section 27 of the General Clauses Act, 1897, the Supreme Court held that:

"...No doubt Section 138 of the Act does not require that the notice should be given only by "post". Nonetheless the principle incorporated in Section 27 can profitably be imported in a case where the sender has dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice..."

So, there is a clear and cogent declaration in Raja Kumari's case that notice can be deemed to be served if the sendee does not prove that notice was actually not served on him and that he was not responsible for the non-service. In the case in hand, the complainant sent legal notice at both the addresses of the accused and accused has also admitted that the same address is his correct address, thus, notice can be deemed to have been served.

18. Once it is shown by the complainant that he had posted the legal notice at the correct address of the accused, the requirement of law stands satisfied. No further proof of service of legal notice is required. The duty of the complainant was to give a legal notice. He has proved that he had given a legal notice to the accused under Section 138 N. I. Act. Hence, he has discharged the burden. It has been proved that complainant had issued a legal notice under Section 138 N.I. Act within limitation period after dishonouring of the cheque. The complaint is therefore maintainable on this aspect. I get strength from the judgment of the Hon'ble High Court of Delhi in AISHWARYA AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:10:21 +0530 Mayank Pathak v. Elcome Trading Company Pvt. Ltd. and Anr. 231 (2016) DLT



308. In the abovesaid matter before the Hon'ble High Court of Delhi, one of the ground of defence taken by the accused was that legal notice under Section 138 N. I. Act was not served upon him as it was not sent at the correct address of the petitioner. The Hon'ble High Court of Delhi, while dismissing this ground, has held that service of summons in such cases can be considered as service of notice and drawer of the cheque is having option to make the payment within 15 days of the receipt of the summons of the Court along with the copy of the complaint under Section 138 of the Act. The Hon'ble High Court has held as under:

"...16. Other limb of argument advanced by the counsel for the petitioner is that the legal notice sent to the petitioner was never received by the petitioner as the same was never sent to the correct address of the petitioner.

"17. Perusal of record shows that legal notice Ex.CW1/9 was sent on two addresses of the petitioner i.e. L-7, Back Side Ground Floor, Lajpat Nagar-I, New Delhi and I-90, Lower Ground Floor, Lajpat Nagar, Delhi. The legal notice sent on the former address was received back with the report that the addressee had left the address. Whereas, the notice sent on the latter address was not received back. The contention of the petitioner is that his address was never of I-90, Lajpat Nagar but was L-90, Lajpat Nagar-II. Even if for the sake of arguments, it is believed that the address was not correctly mentioned on the legal notice, the judgment of Hon'ble Apex Court in the case of C. C. Alavi Haji v. Papaletty Muhammed & Anr. 2007 (2) JCC (NI) 25 makes it clear that a if person does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot contend that there was no proper service of notice as required under Section 138 of the Act. Relevant para from the judgments is quoted hereunder:

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"It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring the statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran's case (supra), if the "giving of notice" in the context of Clause

(b) of the proviso was the same as the "receipt of notice" a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act..."

19. In C.C. Alavi Haji's case (supra), it is made clear that drawer of the cheque is having option to make the payment within 15 days of the receipt of the summons of the Court along with the copy of the complaint under Section 138 of the Act. But in the present case, it is nowhere the case of the accused that despite having received the copy of the summons of the Court along with a copy of the complaint under Section 138 of the Act, he had made the payment. So, the service of legal notice was not mandated and the accused was having the opportunity to make the payment within 15 days of the receipt of the summons of the Court. Now, he cannot contend that there was no proper service of notice. Therefore, the argument that the complaint is not maintainable on the ground of non service of legal notice is without any merits. I hold that the complaint is maintainable on this aspect.

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20. Now the only question left to be determined is whether the cheque in question was issued by the accused in discharge of legally enforceable debt or liability or not? The version of the complainant is that since the accused has resigned from services of it's firm without serving mandatory period of 24 months, in contravention of clause 8 of employment agreement, he had given the cheque in question equivalent to his 3 months salary as per his employment agreement. Per contra, the accused has claimed that the cheque was given by him to one Ms. Jyoti Jha, employee of complainant's firm for disbursing of his salary when he had joined the complainant firm. There is nothing on record to substantiate such claim of the accused, the accused has not examined Ms. Jyoti Jha despite opportunity and he himself has also not stepped into the witness box to prove the same. Thus, the same cannot be believed merely on the basis of bare statement of accused which are unsubstantiated and uncorroborated, specifically considering third paragraph of Clause 8 of his employment agreement, wherein it is mentioned that "the employee agrees to submit a security cheque to recover the amount in the contingency he or she breaches the company's contract or tries or causes an intentional loss to the company".

21. The accused has also tried to argue that he has no liability for making payment of the cheque amount to the complainant firm as the complainant has misused his cheque in question without filing it's particulars. Even if the version of the accused is taken to be true, the said fact cannot extend any help to accused in the present case. Once, the liability of accused is assessed on the record, the complainant gets authority to fill and present said Cheque for encashment, as per provisions of Section 20 of Act, as per which it is open to a person to sign and deliver blank and incomplete instrument and it is equally open for the holder to fill up blank and specify amount therein. Similar position has also been laid down in General Auto Sales v. Vijaylakshmi 2005(1) CCC 654(Kerala), Purushottam Versus AISHWARYA AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:10:56 +0530 Manohar K. Deshmukh & Anr. 2007 STPL(DC) 988(BOM), Moideen Versus Johny 2006 STPL(DC) 700(KER) Prabhakar Xembhu Versus Surendra V. Pai And Another

2006 STPL(DC) 660 (BOM) and Sripati Singh Vs. State of Jharkhand & Ors Appeal No. 12691270 of 2021. In view of discussion made above it becomes clear that once the complainant establishes the fact that the accused had liability towards the complainant for the alleged amount, the complainant gets authority to fill the cheque amount and present the same.

22. It has also been argued on behalf of accused that the complainant has no authority to pursue this complaint as Mr. Rajeev Arora, signed on his employment agreement being Director of his Pvt. Ltd. Company and not being proprietor of his proprietorship concern namely M/S Nationwide Immigrations Services. However, I find no merits in this submission as the name of Pvt. Ltd. Company is nowhere mentioned in the employment agreement Ex. CW1/A rather perusal of same reveals that Mr. Rajeev Arora has signed the employment agreement being owner of M/s Nationwide Immigration Services and CW□ has also stated the same fact during his cross examination and he even submitted that he can produce GST Certificate to show that he is the proprietor of the proprietorship concern, however, accused did not ask him to produce such document. Thus, the Mr. Rajeev Arora has established his capacity to pursue this complaint.

23. Now coming to the last defence of the accused that he had no existing liability towards the complainant on the date of drawal of the cheque ie.. 18.07.2020. With respect to this defence, it is pertinent to determine the date of resignation of the accused. The complainant has stated in para No. 6 of his complaint that the accused has resigned from the services of complainant on 25.07.2020 and stated that the accused had issued the cheque in question in discharge of his liability as per clause 8 of his employment agreement. As per Clause 8, the employee is liable to pay a sum of rupees equivalent to at least three months salary in compensation, upon leaving the AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:11:07 +0530 organization without serving the mandatory period. Upon reading the same, it becomes clear that the liability for payment of compensation arises only when the employee leaves the organization without completing the mandatory period of 24 months and without serving mandatory notice period of 45 days. In the present case, admittedly the accused has left the services of the complainant almost after one month of his joining. This court is not to look into the reasons of his resignation, however, since the cheque in question has been claimed to have been issued by the accused pursuant to violation clause 8 of the employment agreement, it is very relevant to determine the date of resignation. As per averments made in para No. 6 of the complaint, the accused resigned from the complainant company on 25.07.2020. If the same is correct, then the accused has no subsisting liability on the date of drawal of the cheque i.e. 18.07.2020, however, during his cross examination, contrary to his own averments made in the complaint, Mr. Rajeev Arora has claimed that the accused has resigned from the services of complainant company on 18.07.2020, however, admittedly there is nothing on record to prove this fact, rather the admitted e mail communication of the complainant and accused Mark A which has been put to CW□ during his cross examination shows that accused had resigned from the services of complainant company on 19.07.2020 at 5:04 Pm, thus, as per clause 8 of the employment agreement, the accused had no subsisting liability towards the complainant on any day prior to 19.07.2020 for violation of clause 8. thus, the cheque in question cannot be said to have been issued in discharge of any legally enforceable debt or liability on 18.07.2020. On this point, it is very relevant to refer to judgment of Hon'ble Apex Court in Indus Airways Pvt. Ltd. vs. Magnum Aviation Pvt. Ltd., CRIMINAL APPEAL NO.830 OF 2014 (Arising out of SLP (Crl.)No.9752 of

2010), decided on 07.04.2014, wherein Hon'ble Apex Court observed that:

"...to attract an offence under Section 138, there should be a AISHWARYA SHARMA SHARMA Date:

2022.07.22 15:11:11 +0530 legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of an existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to it's logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an existing debt or liability..."

24. In view of the law discussed above, it becomes clear that, the existence of debt/liability on the date when the cheque was drawn is a sine qua non for bringing an offence under the ambit of Section 138 NI ACT. However, in the present case, the date of drawl of cheque is 18.07.2020, whereas the date of resignation of the accused is not before 19.07.2020, thus, the cheque in question cannot be said to have been issued in discharge of any existing debt or liability. In view of the discussion made above, this Court is of the considered view that the complainant could not establish that the cheque in question was issued by the accused in discharge of legally enforceable liability, therefore, notwithstanding that it was dishonoured, it cannot come within the purview of section 138 of the NI Act. Accordingly, the accused Rajive Gogna is hereby acquitted of offence U/S 138 of NI Act. Digitally signed by AISHWARYA AISHWARYA SHARMA SHARMA Date: 2022.07.22 15:11:16 +0530 Announced in the open court on (Aishwarya Sharma) this day i.e. 22.07.2022 MM (N.I. ACT)Digital Court□02/SED, Saket Courts, New Delhi