

# Cc Ni Act No.1075 Of 2021 Randhir Kr. ... vs . Girija Prasad Page No. 1 on 20 May, 2022

CC NI ACT No.1075 of 2021 Randhir Kr. Singh vs. Girija Prasad 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 ACT/1075/2021

RANDHIR KUMAR SINGH ...Complainant  
Versus  
GIRIJA PRASAD ... Accused

1. Name & address of the complainant: RANDHIR KUMAR SINGH  
S/O Late Sh. Devesh Kr. Singh  
R/O G-1/40, Indira Enclave,  
Sector 21 D, Faridabad (HR)  
121001
2. Name & address of the accused : GIRIJA PRASAD  
S/O Sh. Ram Lakhan  
R/O Village Chikhari, Post-  
Harringtanganj, Tehsil Milkipur,  
Dist. Faizabad-224208  
Also at Office of SDM, Teh.  
Jaisingpur, Dist. Sultanpur (UP)  
  
Also at Office of Tehsildar, Teh.  
Jaisingpur, Dist. Sultanpur (UP)
3. Offence complained of : U/S 138 The Negotiable  
Instruments Act,1881.
4. Plea of accused : Pleded not guilty.
5. Final Arguments : 28.04.2022
6. Date of Institution of case : 15.01.2021
7. Date of decision of the case : 20.05.2022

AISHWARYA  
SHARMA

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JUDGEMENT

1. Vide this judgment, I shall dispose of the aforementioned complaint case filed by the complainant, Randhir Kumar Singh (hereinafter referred to as the 'complainant') against accused, Girija Prasad, (hereinafter referred to as the 'accused').

2. Factual Matrix: The complainant's case is that the accused got to know the complainant being Lekhpal of his village when in September, 2018 pursuant to death of his father, the complainant moved to his village for transfer of his property. The accused had taken Rs. 90,000/- from the complainant by credit card and cash due to some personal problem and repaid the same. The accused also approached the complainant for friendly loan of Rs. 4 Lakh for his house constructions with the promise to repay the same upto November, 2019 and for repayment of this loan amount, the accused issued one cheque bearing No. 857367 for a sum of Rs. 3 lakh, drawn on Baroda Uttarpradesh Gramin Bank (hereinafter referred as a cheque in question) and another cheque of his son bearing No. 807303 for a sum of Rs. 1 Lakh, drawn on State Bank of India. However, the cheque in question was dishonoured with remarks "funds Insufficient" vide return memo dated 25.11.2020 upon its presentation pursuant to which the complainant served legal demand notice dated 03.12.2020 by speed post and whatsapp upon the accused, which was duly served upon the accused. However, the accused did not come forward to repay his debt within the prescribed period of fifteen days. Hence, being aggrieved, the complainant filed the present complaint under section 138 of The Negotiable Instruments Act, 1881 on 15.01.2021 and prayed that the accused be summoned and punished under section 138 of The Negotiable Instruments Act, 1881.

3. Summoning of accused: The court summoned the accused after hearing the arguments at the stage of pre-summoning vide order dated 12.04.2021 and the accused entered appearance in the present case on 17.12.2021.

4. Notice: The court has framed notice of accusation under Section 251 AISHWARYA AISHWARYA SHARMA SHARMA Date: 2022.05.20 16:20:48 +0530 Cr.P.C. against the accused on 17.12.2021. 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.

5. Plea of the accused: The accused pleaded not guilty and claimed trial. He admitted his signatures on the cheque in question and that the address mentioned in the legal demand notice is his correct address and he received legal demand notice on the said address. The accused took defence that he obtained loan of Rs. 2,25,000/- from the complainant and has given the cheque in question as security and also affixed his signatures on some blank papers. He claimed that he has returned the amount and after return of the amount, he demanded his cheque from the complainant but the complainant did not return the same on one pretext or another and later on presented it to the bank and thus, he has also filed reply to the legal demand notice and after reply he has sent Rs. 2,25,000/- to the complainant by transferring some of the amount in his bank account and by giving remaining amount to him in cash. On the same date the statement of accused was recorded U/s 294 Cr. P.C wherein he admitted correctness of dishonor memo and postal receipt and he also admitted his signatures on agreement Ex. CW1/5, however, claimed that this document was blank and he affixed his signatures. He has also admitted that he has sent reply to legal notice which is annexed with the complaint.

6. 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. CW1/A bearing his signatures at point A & B wherein he has reiterated the averments made in the complaint. To support his case, the complainant has also placed on record Ex.CW□/1 the original cheques in question Ex. CW1/2 return memo dated 25.11.2020, Ex. CW1/3 the legal demand notice dated 03.12.2020, Ex. CW1/4 postal receipts and its tracking report Mark A. the complainant has also tendered Ex. CW1/5 which is the loan agreement executed between the parties regarding the loan transaction. Thereafter the complainant was subjected to cross examination. AISHWARYA AISHWARYA SHARMA Date: 2022.05.20 16:20:54 +0530

7. During his cross examination, the complainant stated that his monthly income at the time of advancement of loan was approximately Rs. 60,000/□to Rs.1,00,000/□and he also use to file Income tax return. He stated that the loan of Rs. 4,00,000/□was advanced to the accused in installments and the accused has not repaid no any amount towards this loan. He further stated that the accused handed over the cheque in question after filling all the particulars except the date. He denied the suggestion that Ex. CW1/5 was blank when both the parties affix their signatures on the same and he stated that Ex. CW1/5 was written at the instructions of accused and this witness affixed his signatures after reading its contents. He further stated that accused being Patwari knows the value of stamp papers and relevance of fixing his signatures on any document. He further stated that the accused told him that he needed amount for construction of his house at Hamilton Village and the accused give him the cheque in question as security towards repayment as he was not willing to advance this much big amount to the accused without any security.

8. Examination of the accused under section 313 Cr.P.C: The accused was examined under section 313 Cr.P.C. on 25.02.2022, wherein he stated that he obtained friendly loan of Rs. 2,25,000/□from the complainant in May,2019 with the assurance to repay the same within 1 year. He further stated that he obtained his signatures on one blank stamp paper and on that stamp paper his son also affixed his signatures as witness on the stamp paper. He admitted that he had handed over the cheque in question as security towards repayment of the loan at the time of obtaining the loan amount. However, he claimed that the cheque was blank. He admitted his signatures on the cheque in question, however, denied filling its particulars. He also admitted that the cheque in question was dishonoured with remarks "funds Insufficient" vide return memo dated 25.11.2020. He claimed that he has no liability towards the complainant as the loan amount was already repaid. He stated that he intends to lead defence evidence.

9. In his defence, the Accused has examined himself as DW□ and stated that he became acquainted with the complainant as he was posted in his village and AISHWARYA SHARMA SHARMA Date: 2022.05.20 16:20:58 +0530 the complainant had come there for some work. He admitted having received Rs.2,25,000/□from the complainant by account transfer in two installments, however, claimed that no agreement was executed between the parties, as he was very close to the complainant. He claimed that he has returned this amount by transferring Rs. 70,000/□in the account of complainant and by payment of remaining amount in cash. He claimed that he affixed his signatures on one blank signed cheque and also affixed his signatures along with his son, on some blank stamp papers when he obtained loan from the complainant. He also claimed that the

complainant also took one blank cheque of his son as security at the time of advancement of loan. He claimed that the agreement EX.. CW1/5 was not executed in his presence and its contents were not read over to him. Thereafter, he was subjected to cross examination.

10. During his cross examination, he stated that he is working as Lekhpal. He admitted his photograph on agreement Ex.CW1/5 and also admitted that the photograph was clicked along with the photograph of complainant at Sultan Pur. He has also admitted his signatures and signatures of his son on agreement Ex. CW1/5. He further admitted that he purchased stamp papers for execution of Ex. CW1/5 himself. He has also admitted that he has not brought any proof to establish that he has return part of the loan amount to the complainant after receiving legal demand notice. He also denied having any other financial transaction with the complainant, however, when he was confronted with account statement of complainant Ex. CW1/6, he admitted having received Rs. 15000/□on one occasion, Rs. 50,000/□by credit card, Rs. 40,000/□in cash from the complainant. He denied the suggestion that he signed Ex. CW1/5 after reading its contents. He has also admitted having not filed any complaint against the complainant. He has further admitted that he has not given any stop payment instruction to his bank to stop misuse of his cheque. He also admitted having not made any written or verbal communication with the complainant for return of his cheque. He stated that he returned Rs. 70,000/□to the complainant before Legal Demand Notice and remaining amount after receiving of Legal Demand AISHWARYA AISHWARYA SHARMA SHARMA Date: 2022.05.20 16:21:02 +0530 Notice which is different from his plea taken U/s 251 Cr.P.C wherein he stated that after filing reply to the Legal Demand notice, he gave Rs. 2,25,000/□ to the complainant.

11. Final arguments have been heard on behalf of the both the parties. The matter was then reserved for judgment. The submissions made on behalf of both the parties have been considered.

12. In order to ascertain whether the accused has committed the offence under Section 138 of the NI Act, it is deemed fit to examine separately as to whether all the indispensable ingredients constituting the offence have been proved by the complainant. The offence under Section 138 of the NI Act has the following ingredients:□

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

b) Dishonor of cheque in question which must have been drawn on an account drawn on an account maintained by the accused; c) Service of demand notice seeking payment of cheque amount within fifteen days from the date of service;

d) Non□payment of cheque amount within fifteen days from the date of service of notice; and

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

13. Presentation of the impugned cheque for encashment and dishonor of the cheque for the reason "Funds insufficient" is not disputed as it is a matter of record proved by the return memo dated

25.11.2020 which is Ex. CW1/2. Therefore, it is a matter of record and has been proved that the impugned cheque was presented within its validity period and dishonoured by the banker of the accused. It is also not disputed that the impugned cheque was issued by accused and was drawn on his bank account as he has not denied his signatures on the cheque. Further, the accused has also not denied service of legal notice dated 03.12.2020 which Ex. CW1/3, rather he has admitted the same and he had also admitted having filed reply to the same. The perusal of reply shows that the accused has admitted having some liability towards AISHWARYA AISHWARYA SHARMA SHARMA Date: 2022.05.20 16:21:07 +0530 the complainant and assured to make payment in due course of time. As such, it is established that the legal notice was served upon the accused but no payment was made despite the service. Finally, the complaint has been filed within limitation period. Therefore, essential ingredients mentioned from b) to e) in the above paragraph have been duly satisfied.

14. The only question remaining for determination is whether a legally valid and enforceable debt existed qua the complainant and the cheque in question was issued in discharge of said liability / debt. It is pertinent to note that Section 139 of the NI Act provides a statutory presumption that the cheque was handed over in respect of a debt or other liability. Under Section 118 of the NI Act, every negotiable instrument is presumed to have been drawn and accepted for consideration. In the case of K. N. Beena v Muniyappan, AIR 2001 SC 2895, it was observed as follows:

"Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of Hiten P. Dalal v Bratindranath Banerjee has also taken an identical view."

15. The Hon'ble Supreme Court, in the case of Hiten P. Dalal v Bratindranath Banerjee (AIR 2001 SC 3897), observed as follows:

"Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in State of Madras vs. A. Vaidyanatha Iyer, (AIR 1958 SC 61), it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused (ibid)."

16. Also, in the case of K. Bhaskaran v Sankaran Vaidhyan Balan 1999 (4) RCR (Criminal) 309, it has been held by the Hon'ble Supreme Court as under:

"As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the court to presume that the holder of the cheque AISHWARYA

AISHWARYA SHARMA SHARMA Date: 2022.05.20 16:21:11 +0530 received it for the discharge of any debt or liability."

17. Further, 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". In Rangappa v Srimohan (2010) 11 SCC 441, the Hon'ble Supreme Court has observed:

"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."

18. Thus, as laid down in catena of decisions, it is an established law that onus lies upon the accused to rebut the presumption and to establish that the cheque in question was not given in respect of any debt or liability, with the standard of proof being preponderance of probabilities. Therefore, it becomes critical to examine whether the explanation of the accused coupled with the evidence on record is sufficient to dislodge the presumptions envisaged by Sections 118 and 139 of the NI Act.

#### Appreciation of evidence

19. As discussed above, in this case, presentation of cheque, its dishonor and receipt of legal notice is not disputed as it has been proved on the basis of cogent evidence. The accused has admitted the loan transaction, however, he has disputed the loan amount and claimed that he had only taken loan of Rs. 2,25,000/- from the complainant and that he had already returned the same. He has admitted handing over of the cheque in question along with one cheque of his son, towards security for repayment to the complainant. He has also admitted his signatures and signatures of his son on agreement Ex. CW1/5, however, claimed that this document was blank when he along with his son affixed signatures on the same. He further claimed that AISHWARYA AISHWARYA SHARMA SHARMA Date: 2022.05.20 16:21:16 +0530 after return of the loan amount, he demanded return of his cheque from the complainant several times, but he did not return it and misused the same. Now, I proceed to examine whether the abovementioned defence of the accused is supported by the evidence on record and a probable defence has been raised by the accused.

20. The accused has claimed that the cheque was handed over to the complainant without filling its particulars as security towards repayment. During his cross examination, the Complainant stated that all the particulars in the cheque in question were duly filled except the date, thus, it is an admitted position that the complainant himself filled the date. Further, if the version of the accused is taken to be true, even then the same does not dilute the liability of the accused as the legal position on inchoate instruments is well settled. Section 20 of the NI Act provides that if a person signs and delivers a paper stamped in accordance with the loan and either wholly blank or have

written thereon an incomplete negotiable instrument, such person thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp. In the case of *Moideen v Johny* 2006 (2) DCR 421, it has been held that when a blank cheque is issued, the drawer gives an authority to the person to whom it is issued, to fill it up at the appropriate stage with necessary entries and to present it to the bank. Further, in *Ravi Chopra v. State and others* 2008 (102) DRJ 147, the Hon'ble High Court of Delhi has held that 'if a blank signed cheque is given then it is possible that the drawer has consented impliedly or expressly to filling up of the cheque by the payee on a later date'.

21. The another defence taken by the accused is that he has only taken loan of Rs. 2,25,000/□ from the complainant and that he has already returned the same. Per contra, the complainant has claimed that he has advanced loan of Rs. 4 Lakhs to the accused and the accused has not returned any amount to him. To establish this fact the complainant has relied upon agreement Ex. CW1/5. The accused during his cross AISHWARYA SHARMA SHARMA Date: 2022.05.20 16:21:20 +0530 examination has admitted his signatures as well as signatures of his son on this agreement. During his cross examination, the accused has even admitted having purchasing of stamp paper for execution of this agreement. Further, he has also admitted the fact that his photograph affixed on the agreement, was clicked along with the photograph of complainant at Tehsil Sultan Pur. Since, the signatures on the agreement Ex. CW1/5 has been admitted by the accused, the complainant is not required to lead further evidence to prove its execution, as per Section 67 of the Indian Evidence Act. Though, the accused has claimed that he has affixed his signatures on blank paper, however, accused is a Govt. Servant working in a Revenue Department, thus, he very well understands the implication of affixing his signatures on the blank stamp papers. It is very unlikely that he will affix his signatures on blank stamp papers which he has purchased himself, specifically when the parties were not close relatives and family members, and had acquaintance only due to profession of the accused. Further, the version of the accused also becomes doubtful due to the fact that he has admitted receiving part of the amount, as mentioned in point no. 3 of the agreement EX. CW□/5 but he has not led any evidence to the contrary. Thus, the accused has failed to establish the fact that he has only received Rs. 2,25,000/□ and not Rs. 4 Lakh as mentioned in EX. CW1/5.

22. Though the accused has claimed that he has repaid this amount, however, during his cross examination, he admitted that he has not brought any proof to establish the fact of repayment. It is pertinent to point out that accused has nowhere specified any date when the amount was repaid. In notice framed U/s 251 Cr. P.C, he has taken contrary pleas as once he claimed that he returned the amount even before presentment of cheques, and later on, claimed that he returned entire amount after receiving the legal demand notice. In his examination in chief, he claimed that out of Rs. 2,25,000/□ he has transferred Rs. 70,000/□ in the account of the complainant and remaining amount he has repaid in cash. However, he has not placed on record any account statement and not filed any receipt for the said payment. Further, during his cross examination, contrary to his statement U/s 251 Cr. P.C he AISHWARYA Digitally signed by AISHWARYA SHARMA SHARMA Date: 2022.05.20 16:21:25 +0530 claimed that he paid Rs.70,000/□ to the complainant before receiving the Legal Demand notice and remaining amount after receipt of Legal demand notice. Thus, the accused has given contrary version qua repayment and the same cannot be relied upon

unless it is corroborated. Further, even if the version of the accused is to be taken as true and it is believed that he has already returned the alleged amount to the complainant, then, he must have taken some action seeking return of his security cheques from the complainant. However, the accused admitted in his cross examination that he has not filed any complaint against the complainant and that he has not issued any stop payment instructions to his bank to prevent misuse of his cheque. He has also not made any written or verbal communication with the complainant seeking return of his cheque. Since, the accused has not taken any action against the complainant for return of the cheque, this causes dubiety to lurk around the story of the defence and adverse interest can safely be drawn against the accused who has otherwise, failed to adduce any cogent evidence to show that he indeed did everything within his power and control, as a prudent person would do, to ensure that the cheque tendered by him was not misused. Failure, of the accused to prevent such misuse, renders the defence evidence weak. If the accused had no liability towards the complainant, to prevent misuse of his cheque, the accused could have at least given 'stop payment' instruction to his bank. However, admittedly, the cheque in question was dishonoured with remarks 'Funds Insufficient', thus, the version of the accused cannot be believed. Further, in the reply to the Legal Demand Notice also the accused has admitted his liability and has not mentioned anywhere that he has made part payment of the loan amount to the complainant. The statement of CW1 Sh. Randhir Kr. Singh, which is quite natural and seems to be trustworthy and shows that the cheque in question was given by accused to complainant in discharge of loan liability as security as they knew each other and also had financial transaction in past and this fact was also admitted by accused. Section 139 of The Negotiable Instruments Act, 1881 also carves out a presumption in favour of the drawee that the cheque was issued to him in discharge of a debt or other liability of a legally enforceable nature. Also, the said provision must be read along with the Section 118 of the same enactment which spells out another presumption in favour of the drawee that every negotiable instrument was drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. In view of the testimony of complainant and presumption of law existing in favor of the complainant, the onus to prove that the accused has repaid the loan amount and has not taken the loan of Rs. 4 lakh as alleged by the complainant rests on accused as per Section 103 of the Indian Evidence Act, 1872 which enunciates that the person who asserts a fact must prove the same unless the law otherwise provides. However, as discussed above, the accused has failed to discharge his burden as he has not lead any cogent evidence to support his defence.

23. In view of the discussion made above, since the defences taken by the accused stand beseeched and the complainant's version stands established on the basis of documents produced, along with the statutory presumptions in the NI act under section 139, all the elements of Section 138 NI Act stands assembled.

24. Ratio: Since in the instant case, the accused has failed to lead any convincing evidence to aid him in discharge of his onus and the presumption of law operates in favour of existence of debt or liability, having considered the entire evidence, I am of the opinion that the complainant has successfully proved all the essential ingredients of Section 138 of the Act. Accordingly, accused Girija Prasad is found guilty of offence U/S 138 NI Act. Let he be heard on point of sentence on another



date.

25. Let the copy of this judgment be given to the convict free of cost and the same be also uploaded on CIS and Layers forthwith. Digitally signed by AISHWARYA AISHWARYA SHARMA SHARMA  
Date: 2022.05.20 Announced in the open court on (Aishwarya Sharma) 16:21:35 +0530 this day i.e 20.05.2022 MM (N.I. ACT)Digital Court□02/SED, Saket Courts, New Delhi