

Pawan Kumar vs . Shailender on 22 July, 2023

IN THE COURT OF SH. ANSHUL SINGHAL,
MM (NI ACT)-03, ROUSE AVENUE COURT COMPLEX,
NEW DELHI DISTRICT, NEW DELHI

In the matter of: CC No.: 3526/2020
CNR NO.: DLND02-004748-2020

Sh. Pawan Kumar
S/o Sh. Jai Narayan
R/o L-180-B, Gali no.3
Mahipalpur, New Delhi-110037

.....Complainant

versus

Sh. Shailender
S/o Sh. J.D. Thakur
R/o Flat no. 233, Vasant Apartment,
Vasant Vihar, New Delhi-110057

.....Accused

JUDGEMENT

Date of Institution of Complaint : 26.02.2020 Police Station : V.K (South) Offence Complained of :
u/s. 138 of NI Act Plea of Accused : Not Guilty Date of Final Arguments Heard : 30.06.2023
Decision Qua Accused : Acquitted Date of Decision : 22.07.2023 BRIEF STATEMENT OF
REASONS FOR DECISION

1. Vide this judgement, I shall decide the present complaint filed u/s. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) filed by the complainant against the accused on account of dishonour of two cheques, one cheque bearing no.186072 dated 13.11.2019 and another cheque Pawan Kumar Vs. Shailender bearing no. 186073 dated 02.12.2019, both for a sum of Rs.5,00,000/- each and both drawn on State Bank of India allegedly issued by the accused in favour of the complainant (hereinafter referred to as the cheques in question).

CASE OF THE COMPLAINANT

2. Brief facts of the case as per the complaint are that as per the complaint are that accused was an old acquaintance of complainant. It is further stated that accused approached the complainant in first week of January, 2017 and requested for a friendly loan for a sum of Rs.10,00,000/- and further assured the complainant to return the same on or before 19.08.2019. It is further stated that complainant had given the said loan to the accused on 24.01.2017 and further executed a loan agreement dated 24.01.2017 with the accused. It is further stated that the accused in turn assured the complainant for repayment of the same and for that purpose he issued two post dated cheques in favour of the complainant while receiving the said amount from the complainant with an assurance

that cheques will be honored upon presentation.

3. It is further stated that on presentation, both cheques in question were returned dishonoured with remarks "Payment stopped by drawer" vide cheque return memos dated 27.12.2019 That thereafter, a legal notice was sent to the accused dated 21.01.2020 and since no payment was made within 15 days of the service of legal notice, then the present case has been filed.

4. In support of the case of the complainant, Ld. counsel for the complainant has relied on averments made in the complaint, the evidence by way of affidavit filed by the complainant, the Pawan Kumar Vs. Shailender presumption of law u/s. 118(a) r/w. 139 of the NI Act and the following documentary evidence:

1. Loan Agreement dated 24.01.2017 Ex.CW-1/A
2. Cheques in question Ex.CW-1/B and Ex.CW-1/C
3. Bank return memos Ex.CW-1/D and Ex.CW-1/E
4. Legal Demand notice and original Ex.CW-1/F, Ex.CW-
postal receipts 1/G and Ex.CW-1/H
5. Original Returned Postal Envelopes Ex.CW-1/I and
Ex.CW-1/J
6. Present complaint Ex.CW-1/K

CASE PROCEEDINGS

5. In the present matter notice of accusation u/s. 138 of the NI Act was served on the accused on 27.09.2022 and the accused pleaded not guilty and claimed trial. The plea of defence of the accused was also recorded by the court on the same day.

6. An oral application u/s. 145(2) of the NI Act moved on behalf of the accused was allowed vide order dated 27.09.2022 and the accused was granted an opportunity to cross-examine the complainant. The complainant was duly cross-examined and discharged and vide separate statement of the complainant dated 17.03.2023, the post-summoning evidence was closed.

7. Statement of accused u/s. 281 r/w. Section 313 CrPC was recorded on 17.03.2023 and all the incriminating evidence was put to the accused. During his statement recorded u/s 313 Cr.P.C, the accused has admitted his signatures on the cheques in question, however denied filling any particulars on the same. The accused further denied the receipt of legal demand notice and the Pawan Kumar Vs. Shailender execution of loan agreement Ex-CW1/A. He has also denied the receipt of loan of Rs. 10,00,000/- from the complainant. The accused, however, admitted that the address

mentioned on the legal demand notice is his correct address. It is the case of the accused that he had asked for a loan of Rs. 3,00,000/- to Rs.

4,00,000/- from the complainant, however, the same was not advanced to him and the complainant has misused his security cheques. He has further stated that he has issued stop payment instructions to his banker.

8. Since the accused chose to lead Defence Evidence, matter was fixed for filing of appropriate application u/s. 315 CrPC along with list of witnesses, if required. List of defence witnesses filed on behalf of accused and same was allowed by this court vide order dated 12.05.2023. In support of his defence, the accused has examined DW-1 Sh. Vikram Kumar Rajan. Witness was duly cross-examined by Ld. counsel for the complainant and discharged. Vide separate statement of the accused dated 12.05.2023, the defence evidence was closed and matter was adjourned for final arguments.

9. Final arguments were heard by this court on 30.06.2023.

10. I have heard counsel for the parties, perused the record and have gone through the relevant provisions of the law.

LAW UNDER CONSIDERATION

11. At the very outset, it is pertinent to lay down the ingredients of the offence u/s. 138 of NI Act. In *Jugesh Sehgal vs. Shamsher Singh Gogi*, (2009) 14 SCC 683, the Hon'ble Supreme Court of India culled out the following ingredients in order to constitute an offence u/s. 138 of NI Act:

Pawan Kumar Vs. Shailender "13. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) 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;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) 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;

(iv) that 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;

(v) 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) 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.

Being cumulative, 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."

12. Before moving forward with the contentions of the accused, it is pertinent to note that as per the provisions of section 118(a) and 139 of the NI Act, in every case u/s. 138 of NI Act, there is a presumption of law that the cheque has been Pawan Kumar Vs. Shailender issued for consideration and in discharge of legally enforceable debt or liability.

13. It is further pertinent to mention the relevant judgments on the point of presumption of existence of legally enforceable debt or liability. Reliance is placed by this court upon the judgments of Hon'ble Supreme Court of India in Rangappa v. Sri Mohan, (2010) 11 SCC 441, Kumar Exports vs. Sharma Carpets, (2009) 2 SCC 513, and Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197, wherein it has been held that the presumption u/s. 139 NI Act is a presumption of law and not presumption of fact. It has further been held that it is not necessary that the cheque must have been filled by the accused himself and the accused may be liable even when the cheque has been filled by the complainant. The essential requirement is that the liability must exist on the date of the presentation of the cheque in question. It has been further held that once the signatures on the cheque are admitted then the court is bound to raise presumption u/s. 118 r/w. 139 NI Act regarding existence of legally enforceable debt or liability.

14. In the facts of the present case, the signatures on the cheque in question have been admitted by the accused. Accordingly, this court raises presumption u/s. 118(a) r/w. section 139 of NI Act that the cheque in question was issued by the accused to the complainant in discharge of legally enforceable debt or liability and it is now on the accused to raise a probable defence and to prove his case on the basis of preponderance of probabilities.

DEFENCE OF THE ACCUSED

15. The accused has primarily taken two defences, firstly, that Pawan Kumar Vs. Shailender the legal demand notice was never served upon the accused and secondly, that there is no legally enforceable debt or liability in favour of the complainant equivalent to the amount of cheque in question.

FIRST DEFENCE

16. The first defence taken by the accused is that the legal demand notice was never served upon him and hence, the basic ingredients of the offence u/s 138 N.I. Act are not fulfilled.

17. Ld. counsel for the accused has submitted that it is apparently clear from the returned postal envelopes placed on record as Ex.CW-1/I and Ex.CW-1/J that the legal demand notice was not served upon the accused. In support of his arguments, Ld. Counsel for the accused has relied on the judgement of Hon'ble Supreme Court of India in Raja Kumari Vs. Subbarama Naidu, 2004 (3) KLT 799 (SC) (two-judges bench) and that of Hon'ble Kerala High Court in Anil Raj Vs. Integrated Finance Co. Ltd. 2006(1) ALD CRL 36 (single- judge bench).

18. Ld. Counsel for the accused has further submitted that the legal demand notice has been sent to the wrong address of the accused bearing H.No. 233, Vasant Apartment, Vasant Vihar, New Delhi whereas the correct address of the accused is H.No. 233, Basant Apartment, Vasant Vihar, New Delhi.

19. Per contra, Ld. Counsel for the complainant has submitted that the legal demand notice was sent to the correct address of the accused and the same has been admitted by him in his statement recorded u/s 313 Cr.P.C as well as in his plea of defence. In support of his arguments, Ld. Counsel for the complainant has Pawan Kumar Vs. Shailender relied on judgement of Hon'ble Supreme Court of India in C.C. Alavi Haji vs. Palapetty Muhammed, (2007) 6 SCC 555 and section 27 of the General Clauses Act.

20. Primarily two arguments have been taken by the accused in support of his defence, firstly, that legal demand notice is not sent on the correct address and secondly, that it was never served upon the accused. In regard to the first argument, it is to be noted that there is nothing on record to even remotely suggest that Vasant Apartment and Basant Apartment are two different buildings/premises and not merely a typographical error on part of the complainant. It is also to be noted that in the vakalatnama executed by the accused which is placed on record, the address of the accused is mentioned as H.No.233, Vasant Apartment, Vasant Vihar, New Delhi. It is further to be noted that B/Ws issued against the accused were received back duly executed for 28.07.2022 and in those bail bonds executed before the process server also, address of the accused mentioned is H.No.233, Vasant Apartment, Vasant Vihar, New Delhi.

21. This court cannot lose the sight of the fact that accused has admitted his address mentioned in the legal demand notice to be his correct address in his statement recorded u/s 313 Cr.P.C on 17.03.2023 and in his plea of defence recorded on 27.09.2022.

22. I have gone through the judgments relied upon by Ld. counsel for the accused. Both the judgements have been passed in light of their own peculiar facts and circumstances, however, the judgment of Hon'ble Supreme Court of India in C.C. Alavi Haji (supra) (three-judges bench) is an authority on this point, wherein it has been held as follows:

Pawan Kumar Vs. Shailender "15.... In our opinion, therefore, when the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory

requirement of issue of notice in terms of Clause

(b) of proviso to Section 138 of the Act stands complied with. It is then for the drawer to rebut the presumption about the service of notice and show that he had no knowledge that the notice was brought to his address or that the address mentioned on the cover was incorrect or that the letter was never tendered or that the report of the postman was incorrect. In our opinion, this interpretation of the provision would effectuate the object and purpose for which proviso to Section 138 was enacted, namely, to avoid unnecessary hardship to an honest drawer of a cheque and to provide him an opportunity to make amends.

17.... 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 statutory presumption to the contrary under Section 27 of the GC Act and Section 114 of the Evidence Act."

23. In this regard, reliance is also placed by this court on the judgment of Hon'ble High Court of Delhi in RL Varma & Sons (HUF) vs. P. C. Sharma 2019 SCC OnLine Del 8964.

24. There is nothing on record to suggest that the legal demand Pawan Kumar Vs. Shailender notice was not sent on the correct address of the accused, hence, the accused cannot take a plea that he has not received the legal demand notice from the complainant in view of the above-stated judgement of Hon'ble Supreme Court of India and Hon'ble High Court of Delhi.

25. In view of the above discussion, the plea taken by the accused that he has not received the legal demand notice is not tenable in the eyes of law.

SECOND DEFENCE

26. The second defence taken by the accused is that he does not have any legally enforceable debt or liability in favour of the complainant in respect of the cheques in question.

27. Ld. Counsel for the accused has submitted that the loan agreement Ex.CW-1/A is a false and fabricated document, its execution is disputed and the same cannot be relied upon by this court for the following reasons:

(a) That the loan agreement is compulsorily registrable under the Registration Act, 1908 and since, it has not been compulsorily registered, hence, in terms of Section 49 of the Registration Act, 1908, the said document cannot be relied upon by this court

as part of evidence.

(b) That as per Section 68 of the Indian Evidence Act, any document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution.

(c) That even as per the complainant, the alleged loan agreement has been executed at his residence in the night and apparently, in the absence of the notary officer, who has allegedly Pawan Kumar Vs. Shailender attested the loan agreement. In this regard, attention of this court has been drawn towards the following statement made by the complainant in his cross-examination dated 02.12.2022:

"The agreement which is Ex-CW1/A was prepared at Tehsil Mehrauli, New Delhi by me at the instance of the accused. The agreement was prepared and executed on 24.01.2017. I had purchased the said paper from Tehsil itself. It is correct that I had told the typist about the terms of the loan agreement. The witnesses had affixed their signatures on the loan agreement on the very same day at my residence in presence of both the parties. The accused had also signed the agreement at my residence. The agreement was signed at about 7 P.M to 7:30 P.M on 24.01.2017. No person other than me, accused & the two witnesses were present at the time of signing of the said agreement. One copy of the said loan agreement was also given to the accused."

(Emphasis Supplied)

28. Per Contra, Ld. counsel for the complainant has submitted that the loan agreement Ex.CW-1/A proves the loan transaction between both the parties. He has further submitted that the same is neither compulsorily registrable nor is there any requirement for attestation of the same. Ld. counsel for the complainant has submitted that hence, neither section 17 of Registration Act, nor section 68 of the Indian Evidence Act are applicable to the facts of the present matter. Ld. counsel for the complainant has further submitted that there is no material contradiction in the statement of the complainant in regard to the execution of loan agreement Ex.CW-1/A, which would create any doubt in the mind of the court pertaining to the execution of the same.

29. Ld. counsel for the accused has further submitted that the Pawan Kumar Vs. Shailender complainant did not have the requisite financial capacity or source of funds to advance a loan of Rs. 10 lakhs to the accused as stated by complainant in his complaint and in the alleged agreement. In this regard, Ld. counsel for the accused has drawn the attention of this court towards the following statements made by the complainant during his cross-examination dated:

"The loan in question was given to the accused by cash. The denomination of the loan amount given consisted of Rs. 500/- notes and Rs. 1000/- notes. Some notes were also in the denomination of Rs. 2000/-. I do not remember the exact number of notes of each denominations or the total number of notes given to the accused by me.

Part of the amount to be advanced to the accused was taken by me from my brother Sh. Mukesh Kumar and the remaining amount was given by me through my own savings. I had not withdrawn any money from my bank for the said purpose as I am engaged in a business where most of the dealings are done in cash. My brother had given to me approximately Rs. 7,50,000/-. It is correct that I had given only approximately Rs. 2,50,000/- from my own savings, Vol. Me and my brother keep borrowing and lending money to each other as per need & requirement. No written document is ever prepared between me and my brother in regard to our transactions."

30. Ld. counsel for the accused has submitted that notes in the denomination of Rs.1,000/- were not legal tender as on 24.01.2017 due to demonetization on 08.11.2016.

31. Ld. counsel for the accused has further submitted that there is nothing on record to even remotely suggest that the complainant had taken a sum of Rs.7,50,000/- from his brother. In this regard, he has submitted that neither any receipt has been Pawan Kumar Vs. Shailender furnished on record nor the brother of the complainant has entered the witness stand himself to prove any such transaction.

32. Ld. counsel for the accused has further submitted that the complainant has not even been able to prove his own financial capacity to advance the remaining sum of Rs.2,50,000/-. In this regard, he has drawn the attention of this court towards the ITRs filed on behalf of the complainant from AY 2015-16, AY 2016- 17, AY 2018-19 and AY 2019-20, i.e., Ex.CW-1/X1 (colly), wherein the annual income of the complainant for each of these years is shown to be less than Rs.2,80,000/-. Ld. counsel for the accused has further submitted that the complainant has also not made sufficient withdrawals so as to have a sum of Rs.2,50,000/- in cash with him.

33. In support of his case, Ld. Counsel for the accused has relied on the judgment of Hon'ble Bombay High Court in Sanjay Mishra vs. Kanishka Kapoor, 2009 (2) DCR 244, of judgements of Hon'ble Supreme Court of India in Rajaram vs. Maruthachalam, 2023 LiveLaw (SC) 46, John K. Abraham vs. Simon C. Abraham & Ors, 2014 (1) CLJ-311 SC, Indus Airways Pvt. Ltd. vs. Magnum Aviation Pvt. Ltd., Crl. Appeal No. 830/2014 and Basalingappa vs. Mudibasappa, (2019) 5 SCC 418 and judgement of High Court of Delhi in Devender Kumar vs. Khem Chand, Crl. Rev. No. 679/2012.

34. Per Contra, Ld. counsel for the complainant has submitted that duly executed loan agreement between the parties is already on record which proves the transaction at hand. He has further submitted that the complainant is engaged in the business of dealing in building material, which is largely a business of cash Pawan Kumar Vs. Shailender deals and hence, the financial capacity of the complainant to advance the loan in question cannot be doubted. He has further submitted that the brother of the complainant need not have himself entered the witness stand, when the complainant has deposed to the effect that he had taken a sum of Rs.7,50,000/- from his brother in cash.

35. Ld. counsel for the complainant has relied on presumption u/s. 118 r/w. 139 NI Act to show the existence of legal liability in favour of the complainant. Ld. Counsel for the complainant has further

relied on the judgements of Hon'ble Supreme Court of India in Rangappa (supra) and in Kalamani Tex and Anr. vs. P. Balasubramanian, 2021 SCC OnLine SC 75.

36. I have heard the rival submissions of both the parties on both the points, i.e., on the loan agreement as well as on the loan transaction itself. I have also perused the relevant record of the case in this regard.

37. Reliance is placed by this court on the judgment of Hon'ble Supreme Court of India in APS Forex Services Pvt. Ltd. vs. Shakti International Fashion Linkers and Ors., (2020) 12 SCC 724, it was laid down by Hon'ble Supreme Court of India as follows:

"We are of the view that whenever the accused has questioned the financial capacity of the complainant in support of his probable defence, despite the presumption under Section 139 of the N.I. Act about the presumption of legally enforceable debt and such presumption is rebuttable, thereafter the onus shifts again on the complainant to prove his financial capacity and at that stage the complainant is required to lead the evidence to prove his financial capacity, more particularly when it is a case of giving loan by Pawan Kumar Vs. Shailender cash and thereafter issuance of a cheque."

38. In Basalingappa vs. Mudibasappa, (2019) 5 SCC 418, it was held by Hon'ble Supreme Court of India that the accused can always show that the complainant had no financial capacity to advance the alleged loan and the same shall be a probable defence which the accused can raise. Similar observations have been made by the Hon'ble High Court of Delhi in Satish Kumar vs. State (NCT of Delhi), 204 (2013) DLT 209.

39. Reliance is further placed by this court on the judgment of Hon'ble Kerala High Court in Sunitha vs. Sheela Antony, 2020 SCC OnLine Ker 1750, wherein the principles laid down by the Hon'ble Supreme Court of India in the above mentioned judgments have been summarized and it has been held as follows:

"The complainant has no obligation, in all cases under Section 138 of the Act, to prove his financial capacity. But, when the case of the complainant is that he lent money to the accused by cash and that the accused issued the cheque in discharge of the liability, and if the accused challenges the financial capacity of the complainant to advance the money, despite the presumption under Section 139 of the Act, the complainant has the obligation to prove his financial capacity or the source of the money allegedly lent by him to the accused. The complainant has no initial burden to prove his financial capacity or the source of the money. The obligation in that regard would arise only when his capacity or capability to advance the money is challenged by the accused."

(Emphasis supplied)

40. Therefore, in cases in which the debt transaction is a cash Pawan Kumar Vs. Shailender transaction, the accused can raise a probable defense by questioning the financial capacity and the source of the complainant, and once the said question is raised, the onus shifts on the complainant to prove his financial capacity.

41. On the basis of the above-cited judgments and in the facts of the present case, the following are the findings of this court:

(a) There is nothing in the Registration Act which mandates that a loan agreement is mandatorily registrable. Since mandatory registration of a loan agreement is not required, hence, the consequences of section 49 of the Registration Act do not follow.

The judgment of Hon'ble Madhya Pradesh High Court relied upon by the accused in Mannulal vs. Ramdayal, First Appeal No. 22/2003, decided on 05.10.2007 is not applicable to the facts of this case, as in that case, the loan agreement was in the form of a simple mortgage, whereas there are no such stipulations in the loan agreement placed on record as Ex.CW-1/A.

(b) Ld. counsel for the accused has also failed to show as to under which law the attestation of a loan agreement is mandatory, so as to attract the provisions of section 68 of the Indian Evidence Act. Prima facie, a loan agreement is a contract between two parties, and as such does not require attestation. Hence, the provisions of section 68 of the Indian Evidence Act are not applicable to the facts of the present matter.

(c) The complainant has stated that he had purchased the stamp paper, however, the name of the purchaser of the stamp paper is shown to be the accused on the first page of the loan agreement, Ex.CW-1/A. It is further to be noted that the complainant has stated that the loan agreement, Ex.CW-1/A, was Pawan Kumar Vs. Shailender executed at his house in presence of the accused and the witnesses and the notary was not present. It is to be noted that the loan agreement is notarized on the day of its execution. These facts have created a doubt in the mind of the court in respect of the due execution of the loan agreement, Ex.CW-1/A.

(d) Admittedly, the complainant has not been able to prove his financial capacity or his source of funds to advance the loan in question. He has not examined his brother to prove the transaction of advancement of a sum of Rs.7,50,000/- in cash to him nor has he otherwise been able to show as to how his brother possessed the financial capacity to advance such a huge sum of Rs.7,50,000/- in cash. The complainant has also not been able to show his financial capacity in the sum of Rs. 2,50,000/- which was advanced by him out of his own savings, despite having an annual income of only approximately Rs.2,75,000/-.

(e) It is also to be noted that the complainant has stated in his cross-examination that some of the notes handed over to the accused by him were also in the denomination of Rs.1000/-. The transaction in question has allegedly taken place on 24.01.2017. As per the gazette Notification No. 2652 dated 08.11.2016 [S.O. 3407(E)] and notification of the Reserve Bank of India, RBI/2016-17/112, DCM (Plg) No.1226/10.27.00/2016-17, the bank notes of denominations of the

existing series of the value of five hundred rupees and one thousand rupees have ceased to be legal tender. Thus, the notes of Rs.1000/- were not legal tender as on the date of the alleged transaction. This casts a serious doubt in the case of the complainant. Either the complainant has lied under oath or the complainant has engaged himself in a legal Pawan Kumar Vs. Shailender transaction through illegal means. The advancement of a loan in the sum of Rs.10,00,000/- almost 2 and a half months after the demonetization of notes, that too with notes in the denomination of Rs.1000/- also, is a circumstance which creates a doubt in the entire transaction between the parties.

42. All the above-mentioned facts and circumstances cast a serious doubt on the due execution of loan agreement, Ex.CW- 1/A as also the loan transaction in question.

43. In view of the above discussion, I am of the considered opinion that the accused has been able to raise a probable defence that he does not have any legally enforceable debt or liability in favour of the complainant in respect of the cheques in question and has also been able to prove his defence on the basis of preponderance of probabilities.

FINAL ORDER

44. It is also imperative to understand that in order to pronounce a conviction in a criminal case, the accused 'must be' guilty and not merely 'may be' guilty. For an accused to be guilty, guilt should not be based on mere surmises and conjectures but it should be based on cogent evidence.

45. In view of the above discussion and in view of the judgments of Hon'ble Superior Courts as stated above, the accused has been able to raise a probable defence and has been able to prove his defence on the basis of preponderance of probabilities that there is no legally enforceable debt or liability in favour of the complainant and against the accused equivalent to the amount of cheque in question as on the date of its drawal or on the date of its presentation. Thus, the accused has been able Pawan Kumar Vs. Shailender to rebut the presumption u/s. 118 r/w. section 139 NI Act. Furthermore, the complainant has failed to prove his case beyond reasonable doubt qua the accused in respect of the cheque in question.

46. In view of the aforesaid, accused, namely, Sh. Shailender, s/o Sh. J.D. Thakur, is hereby acquitted of offence under section 138 Negotiable Instruments Act.

Announced in Open Court (Anshul Singhal) on 22.07.2023 MM(N.I. Act)-03/NDD/RACC/ND Note: This judgment contains 19 signed pages and each page has been signed by the undersigned.

(Anshul Singhal) MM(N.I. Act)-03/NDD/RACC/ND 22.07.2023 Pawan Kumar Vs. Shailender