

Cc Ni Act No. 15235/2021 Ramesh Kumar vs . Mahabir Page No. 1 Of 21 Aggar Aggarwal on 12 May, 2023

IN THE COURT OF MS. EBBANI AGGARWAL
LD. MM (NI ACT), DIGITAL COURT-09, SOUTH-WEST,
DWARKA COURT, NEW DELHI

DLSW020323872021

RAMESH KUMAR
S/o Sh. S.P. Singh
R/o Plot No. 3, Khasra No. 430-431, Gali No.2
Kailash Purt, New Delhi - 110045 Complainant

VERSUS

MAHABIR
S/o Sh. Bharat Singh
R/o G-73, Palika Awas, Sarojini Nagar
New Delhi - 110023 Accused

Complainant Case no.	15235/2021
CNR No.	DLSW020323872021
Title	Ramesh Kumar v. Mahabir
Name of Complainant	Ramesh Kumar
Name of Accused	Mahabir
Date of Institution of Complaint	22.07.2021
Date of Final Arguments	02.05.2023
Date of Pronouncement of Judgment	12.05.2023
Offence Involved	Section 138 NI Act
Plea of the Accused	Pleaded not guilty
Final order	Convicted

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CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 1 of 21 AGGAR AGGARWAL
Date: 2023
WAL

JUDGMENT

1. Present complaint has been filed by complainant alleging an offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "NI Act").

2. Facts, in brief, as alleged in the complaint are that accused had approached complainant for financial help on multiple occasions and has taken a total sum of Rs. 4,90,000/- from complainant which has been acknowledged by the accused in loan agreement dated 13.01.2020 along with payment receipt (Ex. CW-1/A). In furtherance of his legally enforceable debt, accused issued cheque bearing no. 873616 dated 13.12.2020 for a sum of Rs. 4,90,000/- (Ex. CW-1/B) (hereinafter referred to as the "cheque-in-question") which got dishonoured with remarks "Funds Insufficient" vide return memo dated 06.03.2021 (Ex. CW-1/D). The complainant then sent a legal demand notice dated 30.03.2021 (Ex. CW-1/E) to accused calling upon him to make the payment of cheque amount within the statutory period of 15 days. However, accused did not make the payment of amount in question and hence, present complaint alleging an offence under Section 138 of the NI Act was instituted by complainant.

APPEARANCE OF ACCUSED AND FRAMING OF NOTICE

3. This court took cognizance of offence under Section 138 of the NI Act and accused was summoned vide order dated 21.09.2021. Accused entered appearance before this Court on 18.01.2022 and thereafter, Notice as per mandate of EBBANI Digitally by EBBANI signed CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 2 of 21 AGGAR AGGARWAL Date:

WAL 14:06:10 +05'30' 2023.05.12 Section 251 of Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") was framed against the accused wherein accused pleaded not guilty and claimed trial. In his plea of defence, accused has stated that he had taken a loan of Rs. 1,50,000/- from complainant and at that time, he had handed over the present cheque-in-question as a blank signed security cheque which is the present cheque- in-question. Accused further stated that he has paid back the entire loan amount to complainant and that his blank signed security cheque is being misused. Accused further did not deny his signatures on the cheque-in-question and has also stated that he knows complainant.

The matter was then listed for CE.

COMPLAINANT'S EVIDENCE

4. Complainant examined himself as CW-1 who tendered his affidavit of evidence and in proof of its case, the complainant has relied upon the following documents:

(i) Ex. CW-1/A: Loan Agreement dated 13.01.2020.

(ii) Ex. CW-1/B: Cheque in question bearing no. 873616 dated 13.12.2020 for a sum of Rs. 4,90,000/-

(iii) Ex. CW-1/C (Colly): Legal demand notice dated 04.01.2021 along with postal receipts.

(iv) Ex. CW-1/D: Return memo dated 06.03.2021.

(v) Ex. CW-1/E: Legal Demand Notice dated 30.03.2021.

(vi) Ex. CW-1/F: Postal receipts dated 01.04.2021.

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(vii) Ex. CW-1/G: Tracking report of legal demand notice.

Admission-Denial of documents in terms of Section 294 of Cr.P.C. was conducted wherein the accused has not disputed the genuineness of the cheque-in-question (Ex. CW-1/B) as well as the return memo (Ex. CW-1/D).

Thereafter, accused moved an application seeking permission to cross examine the complainant under Section 145(2) of the NI Act which was allowed.

5. Complainant, CW-1, was then cross-examined wherein he deposed that he is a graduate and is conversant in English language. Complainant denied the suggestion that he has no proof to support that he had disbursed a loan of Rs. 4,90,000/- to accused and stated that he has placed on record a loan agreement dated 13.01.2020. Complainant further deposed that present cheque-in-question was handed over by accused on 13.01.2020 when he had disbursed additional sum of Rs. 1,90,000/- to accused and that in furtherance of settlement of entire loan account, loan agreement and payment receipt of Rs. 4,90,000/- was executed on the same date. Complainant further deposed that cheque-in-question was a post-dated cheque and that same was not filled in his presence. Complainant was confronted with the loan agreement dated 13.01.2020, i.e. Ex. CW-1/A wherein he deposed that the said loan agreement is not notarised. Complainant was confronted with the legal demand notice dated 30.03.2021, i.e. Ex. CW-1/E wherein he deposed that the fact that loan agreement dated 13.01.2020 was entered between himself and accused has not been mentioned in the EBBANI Digitally signed CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 4 of 21 by EBBANI AGGAR AGGARWAL Date: 2023.05.12 WAL 14:06:40 +05'30' legal demand notice. Complainant further deposed that there is no single transaction by which loan of Rs. 4,90,000/- was disbursed to accused and that the loan amount was disbursed to accused partly by way of cash and partly by way of bearer cheque which was encashed by accused. Complainant further deposed that he had disbursed sum of Rs. 1,90,000/- on one occasion, Rs. 50,000/- by way of cash and rest of the loan amount were disbursed by way of bearer cheques. Complainant further deposed that he had disbursed the loan to accused as a friendly loan without any interest and that he has not shown the same in his ITR. Complainant was confronted with the legal demand notice dated 04.01.2021 Ex. CW-1/C wherein he deposed that it is correct that he neither placed on record the return memo dated 23.12.2020 nor the tracking report of this legal demand notice on record. Complainant further

deposed that there is no proof in writing to show that accused had asked the complainant to present the cheque-in-question again for encashment in March, 20201.

Complainant, then, closed CE.

STATEMENT OF ACCUSED UNDER SECTION 313 R/W 281 Cr.P.C.

6. Thereafter, all incriminating piece of evidence were put to accused and his statement in terms of Section 313 r/w Section 281 of Cr.P.C. was recorded wherein accused stated that loan agreement as well as the payment receipt (Ex. CW-1/A) are false and fabricated documents and that complainant had taken some blank signed papers from him which are being misused. Accused further stated that he had CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 5 of 21 EBBANI Digitally by EBBANI signed AGGAR AGGARWAL Date: 2023.05.12 WAL 14:06:51 +05'30' taken a loan of Rs. 1,50,000/- from complainant which was disbursed by complainant on two occasions through bearer cheques and that at that time, he had handed over one blank signed cheque as security which is the present cheque-in- question along with some blank signed papers. Accused further stated that he has already paid back the entire loan amount to complainant in monthly instalments of Rs. 9,000/- each which were paid by him either in cash or by way of Google Pay. Accused further stated that he has no legal liability towards complainant and that his blank signed cheques as well as blank signed papers are being misused.

In the said statement itself, accused opted to lead evidence in his defence and the matter was listed for DE.

DEFENCE EVIDENCE

7. Application under Section 315 of Cr.P.C. moved by accused was allowed and accused entered the witness box himself. As part of Defence Evidence, accused has examined himself as DW-1 and Sh. Vishal as DW-2.

8. In support of his defence, accused has placed on record his Statement of bank account which is Ex. DW-1/1 (OSR) (Colly) and has deposed on similar lines as his statement under Section 313 r/w Section 281 Cr.P.C. wherein he has reiterated that he had taken a loan of around Rs. 1,50,000/- from complainant and at that time, he had handed over present cheque-in-question as a blank signed security cheque along with some blank signed papers. Accused further deposed that he had to repay the loan amount in 20 monthly instalments of Rs. 9,000/- each and that he had EBBANI Digitally signed CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 6 of 21 by EBBANI AGGAR AGGARWAL Date: 2023.05.12 WAL 15:23:42 +05'30' made repayment of some instalments and that thereafter, he had made repayment in bulk amounts. Accused further deposed that he had deposited around Rs. 20,000/- in cash directly in in ICICI Bank, Sarojini Nagar Branch bank account of complainant and that on 08.04.2020 at point A of Ex. DW-1/1 (OSR) (Colly) he had withdrawn Rs. 1,00,000/- from his bank account out of which he got Rs. 25,000/- deposited in ICICI Bank account of complainant on the same date. Accused further deposed that on 31.08.2021, he had transferred Rs. 21,000/- in the bank account of Sh. Vishal at point B of Ex. DW-1/1 (OSR)

(Colly) who had further transferred Rs. 19,000/- in PNB Bank account of complainant on his behalf. Accused further deposed that his nephew Sh. Harish had also deposited Rs. 19,000/- in PNB Bank account of complainant on his behalf. Accused further deposed that when he asked complainant to return his blank signed cheque and blank signed papers which complainant refused to do. Accused further deposed that he has no legal liability towards complainant and that his blank signed cheque and papers are being misused.

9. Accused was thereafter cross examined. In his cross- examination, accused deposed that he does not know the complainant from before and that he got in touch with complainant, through one Sh. Anil, only for purpose of disbursal of loan of Rs. 1,50,000/-. Accused further deposed that he had taken loan of Rs. 1,00,000/- on one occasion and loan of Rs. 50,000/- on another occasion from complainant which complainant had disbursed by way of bearer cheques. Accused further deposed that he does not remember the exact date, time and month when the loans were disbursed CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 7 of 21 EBBANI Digitally by EBBANI signed AGGAR Date:

AGGARWAL WAL 14:07:29 +05'30' 2023.05.12 to him. Accused was thereafter confronted with Ex. CW- 1/A loan agreement dated 13.01.2020 wherein he deposed that thumb impressions and signatures at points A, B, C and D are his. Accused further deposed that complainant had earlier filed a complaint against him and at that time, he had entered into a settlement with complainant and that time he had signed the said document. Accused further deposed that he does not remember the date, month or year when earlier complaint was filed by complainant. Accused further deposed that he had received SMS from his bank on 23.12.2020 regarding dishonour of cheque for first time and that after he received one legal demand notice from complainant and that after that, he had approached the complainant. Accused further deposed that he did not see message regarding subsequent dishonour of cheque-in-

question on 06.03.2021. Accused further deposed that he had received legal demand notice dated 30.03.2021. Accused further deposed that transaction at point B of Ex. DW-1/1 (OSR) (COLLY) is between himself and Sh. Vishal and that there is no transaction directly between complainant and himself.

10. Sh. Vishal was examined as DW-2 who has placed on record screenshot of transaction dated 02.09.2021 which was marked as Ex. DW-2/1. DW-2 deposed that accused had transferred Rs. 21,000/- to his bank account via Google Pay and that accused had requested him to transfer Rs. 19,000/- on mobile number belonging to complainant. DW- 2 further deposed that he had transferred Rs. 19,000/- in bank account of complainant on behalf of accused.

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11.DW-2 was thereafter cross examined wherein he deposed that accused is his senior in service and that he knows him professionally. DW-2 further deposed that accused did not inform him anything about the facts and circumstances of present complaint and that he does not have any document in writing to show that accused had asked him to transfer Rs. 19,000/- in bank account of complainant on his behalf.

Thereafter, DE was closed, and matter was listed for final arguments.

FINAL ARGUMENTS

12.Ld. Counsel for complainant has reiterated the averments made in the complaint in his arguments and he has further argued that all the statutory requirements for an offence under Section 138 of the NI Act are met with in the present complaint and that complainant has been able to prove his case beyond reasonable doubt. Ld. Counsel for Complainant has further argued that accused has admitted his signatures on the loan agreement (Ex. CW-1/1) as well as the cheque-in-question and therefore, a presumption under Section 139 of the NI Act operates against the accused. Ld. Counsel for Complainant has further argued that there are various contradictions in the stand taken by the accused and that accused has not been able to establish his defence. Ld. Counsel for Complainant has further argued that with respect to repayment of loan amount by accused, accused has only shown proof of withdrawal of some amount from his bank account and that no evidence has been lead by accused to connect that withdrawal with repayment of present loan in question. Ld. Counsel for Complainant has EBBANI Digitally signed by CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 9 of 21 AGGAR EBBANI AGGARWAL Date: 2023.05.12 15:24:03 +05'30' WAL further argued that transaction of Rs. 19,000/- made from account of Sh. Vishal (DW-2) is dated 02.09.2021 which is after institution of present complaint and that there is nothing on record to show that DW-2 transferred Rs. 19,000/- on behalf of accused. Ld. Counsel for Complainant has further argued that in view of the facts and circumstances of the present complaint, accused be convicted of offence under Section 138 of the NI Act.

13.Per Contra, Ld. Counsel for accused has argued that the loan agreement (Ex. CW-1/1) is a false and fabricated document and that the said document has neither been notarised nor has been signed by any witness nor the stamp paper has been purchased by accused. Ld. Counsel for accused has further argued that accused has no legally enforceable debt towards complainant and that accused has repaid the loan amount of Rs. 1,50,000/- and that blank signed security cheque of accused is now being misused. Ld. Counsel for accused has further argued that complainant has not denied receipt of Rs. 19,000/- from Sh. Vishal (DW-

2) through Google Pay and that Sh. Vishal (DW-2) had made the said payment on behalf of accused and that in view of the same, offence under Section 138 of the NI Act is not made out as some part of the cheque amount has been received by complainant. Ld. Counsel for accused has further argued that accused has been able to rebut the presumption on basis of preponderance of probabilities and therefore, accused be acquitted for offence under Section 138 of the NI Act.

LEGAL POSITION EBBANI byAGGARWAL CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 10 of 21 AGGAR 2023.05.12 Date:

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14. Before proceeding to decide the case on merits, it is imperative that position of law with respect to an offence under Section 138 of the NI Act is discussed.

15. Section 138 of the NI Act reads as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account. -- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless--

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

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and;

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

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

16. In order to constitute an offence under Section 138 of the NI Act the following ingredients must be fulfilled:

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(i) Cheque must be drawn on an account maintained by drawer for discharge of a legally enforceable debt either in part or whole.

(ii) Cheque must be validly presented for encashment, i.e., must be presented within validity period or within 3 months from date of issuance whichever is earlier.

(iii) Cheque must be returned back unpaid with remarks funds insufficient or exceeds the amount arranged for.

(iv) A legal demand notice in writing must be issued by payee or holder in due course, within 30 days of receipt of information regarding dishonour of cheque, calling upon the drawer to make the payment of amount in question within 15 days of receipt of legal demand notice.

(v) Drawer fails to make the payment of amount in question within 15 days of receipt of legal demand notice.

17. Section 139 of the NI Act is a reverse onus clause which was added to the statute book in order to increase the credibility of cheque/negotiable instruments as a mode of payment. Section 139 reads as under:

"139. Presumption in favour of holder. -- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

18. Nature and scope of presumption under Section 139 of the NI Act has been dealt in a catena of judgments. In Hiten P. EBBANI Digitally signed CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 12 of 21 AGGAR by EBBANI AGGARWAL Date: 2023.05.12 WAL 15:24:21 +05'30' Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16, the Hon'ble Supreme Court of India held as under:

"22. 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 v. A. Vaidyanatha Iyer* [AIR 1958 SC 61 : 1958 Cri LJ 232] 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. at p. 65, para 14.) Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case

against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists" [Section 3, Evidence Act]. Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man."

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19. In case Rangappa v. Sri Mohan, (2010) 11 SCC 441, Hon'ble Supreme Court has further held as under:

"27. 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 transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. 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."

20. Section 139 thus creates a rebuttable presumption in favour of complainant which casts an onus on accused to rebut the same on basis of preponderance of probabilities. It is not necessary that accused enters the witness box himself for this purpose, however, making of bare averments is not enough and some proof has to be adduced by accused either from the material which is already available on record or by EBBANI Digitally signed CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 14 of 21 by EBBANI AGGAR AGGARWAL Date: 2023.05.12 WAL 14:09:24 +05'30' leading cogent evidence in support of his defence. [Reliance has been placed on Basalingappa vs Mudibasappa, (2019) 5 SCC 418].

ANALYSIS ON MERITS

21. Position of law being as above, it becomes imperative to examine as to whether complainant has been able to establish the basic ingredients for commission of offence under Section 138 of the NI Act and if the complainant succeeds in same, whether accused has been able to rebut the presumption drawn under Section 139 of the NI Act or not.

22. In the case at hand, accused has admitted his signatures on the cheque-in-question, therefore, a presumption exists in favour of complainant under Section 139 of the NI Act which includes the presumption that cheque-in-question was issued in discharge of a legally enforceable debt. [Reliance has been placed on Basalingappa Case (supra)]

23. With respect to essential ingredients for commission of offence under Section 138 of the NI Act, it can be seen from record that the cheque in question Ex. CW-1/B was presented within three months from the date of issuance viz 13.12.2020 and the same was dishonoured with remarks "Funds Insufficient" vide return memo dated 06.03.2021 Ex. CW-1/D. Legal Demand Notice dated 30.03.2021 Ex. CW-1/E was sent to the accused, i.e. within 30 days of dishonour and the said legal demand notice was delivered to the accused on 08.01.2021 as per the tracking report which has been placed on record. Thereafter, the present EBBANI Digitally by EBBANI signed CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 15 of 21 AGGAR Date:

AGGARWAL WAL 14:09:40 +05'30' 2023.05.12 complaint was filed on 22.07.2021 which is within the prescribed period of limitation in terms of order of Hon'ble Supreme Court of India, dt. 27.04.2021 passed in Re:

Cognizance for extension of limitation [Miscellaneous Application No. 665/2021 in Suo-Motu Writ Petition (Civil) No. 3/2020]. Further, the accused has admitted his signatures on cheque-in-question in the Notice framed against him under Section 251 Cr.P.C. and therefore, it can be inferred that cheque-in-question was issued from an account maintained by the accused himself.

24. In view of the foregoing discussion, complainant has been able to establish basic ingredients for commission of offence under Section 138 of the NI Act. The onus is now on accused to rebut this presumption drawn in favour of complainant on basis of preponderance of probabilities.

25. In order to rebut the presumption, accused has raised following issues in his defence:

25.1 Non-existence of legally enforceable debt: Ld. Counsel for accused has argued that accused had taken a loan of Rs. 1,50,000/- from complainant which he has already repaid, and present cheque-in-question was given as a blank signed security cheque which is being misused by complainant.

25.2. Loan agreement is a false and fabricated document: Ld. Counsel for accused has argued that loan agreement (Ex. CW-1/1) is a false and fabricated document as the same has neither been notarised nor has been entered into in presence of any witness.

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25.3. Repayment of Rs. 19,000/- has not been denied by complainant: Ld. Counsel for accused has argued that accused had transferred Rs. 19,000/- to bank account of complainant through Sh. Vishal (DW-2) and complainant has not denied receipt of the same.

26. It is pertinent to mention here that Accused has admitted taking of loan from complainant, however, he has stated that he had taken a loan of Rs. 1,50,000/- and not of the amount in question and that he has already repaid the loan which he had taken. This is the central defence of accused, however, accused has not led any evidence to substantiate his defence that the loan amount was of Rs. 1,50,000/- neither by leading any cogent evidence nor through any document which was already part of the record. On the other hand, complainant has placed on record a loan agreement (Ex. CW-1/1) wherein the Accused has admitted that he had taken a loan of total sum of Rs. 4,90,000/- from complainant which were disbursed by complainant on various occasions either through bearer cheques or by way of cash.

27. With respect to the said loan agreement, in statement recorded under Section 313 r/w 281 Cr.P.C. as well as in examination in chief, accused has deposed that he had handed over some blank signed papers to complainant which have been misused by complainant. However, in cross examination, when he was confronted with the loan agreement, accused has admitted his signatures at Points A, B, C and D of the loan agreement and has stated in voluntary that complainant had earlier filed some other complaint against him which was settled and that complainant had got EBBANI Digitally signed by EBBANI CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 17 of 21 AGGAR AGGARWAL Date: 2023.05.12 WAL 14:10:04 +05'30' his signatures under pretext of settlement of the earlier complaint. At one point accused has denied execution of the loan agreement whereas on the other hand, he has admitted the execution of the document under pretext of settlement of some other complaint. In light of the same, accused has clearly taken contrary stands with respect to the execution of loan agreement and the subsequent stand has come from

side of accused for the first time during his cross examination and the said fact was not even mentioned by accused when the document was categorically put to accused by this Court in his examination under Section 313 r/w 281 Cr.P.C. Accused has not even placed on record any evidence in proof of his version regarding settlement of an earlier complainant coupled with the contradiction in the stand taken by accused, the defence taken by accused remains a mere bald averment.

28. Coming to the next leg of defence of accused that loan agreement (Ex. CW-1/1) is a false and fabricated document as the same is neither notarised nor entered into in presence of any witness, perusal of the loan agreement shows that same has been executed on a stamp paper and in his cross-examination, accused has admitted that it bears his signatures at Points A, B, C and D. It is not a mandatory requirement of law that every agreement entered into between two parties must be entered in presence of a witness or it should be notarised and absence of either or both things does not make the agreement void or a false document in itself and it is for the party to the agreement who claims it to be false or fabricated to lead evidence in support of the same. In the present case, Accused has not Digitally signed CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 18 of 21 EBBANI byAGGARWAL EBBANI AGGAR 2023.05.12 Date:

WAL 14:10:21 +05'30' lead any evidence to show that loan agreement is a false and fabricated document and has in fact, admitted his signatures on the loan agreement which makes the second leg of defence taken by accused improbable and an unsubstantiated averment.

29. With respect to repayment of loan amount, in his examination in chief, Accused has deposed that he was supposed to repay the loan amount in 20 equal instalments of Rs. 9,000/- each but since, he made some defaults, he made the repayment in bulk amounts. Accused has deposed that he had deposited Rs. 20,000/- in cash in ICICI Bank, Sarojini Nagar branch account of complainant and that his nephew one Sh. Harish had transferred Rs. 19,000/- in the PNB Bank account of complainant. However, accused has neither examined Sh. Harish as a witness nor has he placed on record any receipt of cash deposit to substantiate his claim of repayment.

30. Further, accused has placed on record his statement of account [Ex. DW-1/1(OSR) (Colly)] and he has admitted in his cross examination that there is no transaction his statement of account which is directly between complainant and himself. Accused has relied upon Point A of Ex. DW- 1/1(OSR) (Colly) to show withdrawal of Rs. 1,00,000/- on 08.04.2020 and he has deposed that on same date, he had deposited Rs. 25,000/- in ICICI bank account of complainant. However, no evidence has been lead by accused to show deposit of Rs. 25,000/- out of those Rs. 1,00,000/- in the bank account of complainant in form of cash deposit receipt or any other document whatsoever and in view of the same, CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 19 of 21 EBBANI Digitally by EBBANI signed AGGAR AGGARWAL Date: 2023.05.12 WAL 14:10:34 +05'30' no link can be established in the withdrawal of Rs. 1,00,000/- and repayment of loan amount to complainant.

31. Accused has also relied upon point B of his bank account statement [Ex. DW-1/1(OSR) (Colly)] to show that he had transferred Rs. 21,000/- to Sh. Vishal via UPI transfer and then, Sh. Vishal had transferred Rs. 19,000/- in the account of complainant by UPI transfer on behalf of accused.

Accused has also examined Sh. Vishal as DW-2 who has also placed on record a screenshot of transaction dated 02.09.2021 which is Ex. DW-2/1. However, the said screenshot of the transaction cannot be read in evidence as neither the original device on which the record of transaction is stored was produced before this Court nor the screenshot is accompanied with a certificate under Section 65-B of Indian Evidence Act. [Reliance has been placed on Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorant and Ors., (2022) 7 SCC 1]

32. Ld. Counsel for accused has also argued that complainant has not denied receipt of Rs. 19,000/- from account of Sh. Vishal (DW-2) and in view of part payment received, accused does not have a liability of amount in question towards the complainant. The argument put forward by Ld. Counsel for accused does not hold good in the eyes of law as Rs. 19,000/- were transferred in the account of complainant on 02.09.2021 which is subsequent to filing of present complaint and the liability of accused on date of dishonour of cheque-in-question does not get reduced by a subsequent part payment.

EBBANI byAGGARWAL

CONCLUSION

AGGAR Date:
2023.05.12

CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 20 of 21WAL 14:10:47 +05'30'

33. In view of the foregoing facts, marshalling of evidence as well as established legal position, this court is of the considered opinion that accused has not been able to rebut the presumption drawn in favour of complainant in terms of Section 139 of the NI Act and that complainant has been able establish the basic ingredients for commission of offence under Section 138 of the NI Act. Accused has not been able to establish his defence on basis of preponderance of probabilities either based on the material available on record or by adducing any cogent evidence as except for bare averments, which were not at all substantiated by any material on record.

34. Therefore, in light of the evidence adduced, documents put forth and arguments advanced by the parties and further, in view of the above discussion, this court is of the considered opinion that the accused Mahabir s/o Sh. Bharat Singh is guilty of offence under Section 138 of Negotiable Instruments Act, 1881 and accordingly, is hereby convicted under Section 138 of Negotiable Instruments Act, 1881.

Announced in open court on 12.05.2023.

EBBANI Digitally by EBBANI signed AGGAR Date:

AGGARWAL WAL 14:11:00 +05'30' 2023.05.12 (EBBANI AGGARWAL) MM (NI ACT), DIGITAL COURT-09 SOUTH-WEST DISTRICT, DWARKA COURT NEW DELHI 12.05.2023 CC NI ACT No. 15235/2021 Ramesh Kumar vs. Mahabir Page No. 21 of 21